

# EXHIBIT 1

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Deputy Speaker Curtis Johnson  
425 Rep. John Lewis Way N., Suite 612 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. “You” and “Your” shall refer to Curtis Johnson, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to 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; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively



or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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 mapititude, 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.

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

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

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

i. 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;

j. 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;

k. 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;

l. 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

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

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 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 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.

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.

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.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);



- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.



R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

### **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

### **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
- 3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
- 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
- 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Senator Dawn White

425 Rep. John Lewis Way N., Suite 752 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. “You” and “Your” shall refer to Dawn White, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to 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; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.



33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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 mapititude, 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.

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

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

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

i. 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;

j. 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;

k. 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;

l. 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

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

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 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 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.

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.

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.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.



Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

## **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

## **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of



information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
- 3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
- 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
- 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

## UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,*Defendant*

Civil Action No. 3:23-cv-00832

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To:

Representative Gary Hicks  
425 Rep. John Lewis Way N., Suite 608 Cordell Hull Bldg., Nashville, TN 37243*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk**Attorney's signature*The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. “You” and “Your” shall refer to Gary Hicks, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to 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; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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.

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

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

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

i. 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;

j. 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;

k. 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;

l. 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

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

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 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 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.

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.

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.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**



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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native



files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

## **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

## **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
- 3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
- 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
- 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the



costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Doug Himes, House Ethics Counsel  
425 Rep. John Lewis Way N., 638 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

05/01/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/28/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	UNDEE ERIC ARDSON
	)	UNDE ERIC E. MURP
WILLIAM B. BEE, et al.,	)	UNDE BENITA L. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. You and our shall refer to Doug James, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. Defendants collectively refers to William B. Bee, in his official capacity as Governor of the State of Tennessee; Tre Argett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Hoins, 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 Hounce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. Document is defined to be synonymous in meaning and scope with the term document as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase writings and recordings is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. Legislator means a past or present elected member of the Tennessee House of Representatives ( Tennessee House ) or the Tennessee Senate, including such member's past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member's behalf or subject to the member's control or on behalf of any committee or other body of which the elected member is a member.



5. Redistricting means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. Relating to means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

. Redistricting Plans means collectively the redistricting plans for the Tennessee Senate ( B 103 /SB 80), and the U.S. Congress ( B 1034/SB 81).

8. B 103 and/or SB 80 and/or the Tennessee Senate Plan refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

. B 1034 and/or SB 81 and/or the Congressional Plan refers to the redistricting plan for the Tennessee U.S. ouse of Representatives that was signed into law on February 6, 2022.

10. CD-5 refers to Congressional District 5, as drawn under Congressional Plan B 1034/SB 81.

11. CD-6 refers to Congressional District 6, as drawn under Congressional Plan B 1034/SB 81.

12. CD- refers to Congressional District , as drawn under Congressional Plan B 1034/SB 81.

13. SD-31 refers to Senate District 31, as drawn under the Tennessee Senate Plan B 103 /SB 80.

14. The phrases old plan and/or the previous decade's plan and/or pre-2020 redistricting plan refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. AP refers to Voting Age Population as defined by the United States Census Bureau.

16. CAP refers to Citizen Voting Age Population.

17. BAP refers to Black Voting Age Population.

18. AP refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person's behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms and and or either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. Persons can include entities, incorporated and not, and entities can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

2 . If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. our response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. ou must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

35. These requests do not seek any documents protected by the attorney-client privilege.

36. These requests do not seek any documents already produced by Defendants in this action.

## **DOCUMENTS REQUESTED**

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— B 103 /SB 80 and U.S. Congress— B 1034/SB 81. 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 mapititude, 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.

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



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

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

i. 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;

j. 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;

k. 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;

l. all Documents Relating to the use of Voting Age Population ( VAP ), Black Voting Age Population ( B VAP ), Hispanic Voting Age Population ( H VAP ), Citizen Voting Age Population ( C VAP ), Black Citizen Voting Age Population ( BC VAP ), Hispanic Voting Age Population ( H VAP ), and/or Total Population in connection with

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

. 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 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 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.

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.

. All Documents Relating to the voting districts or TDs for the Redistricting Plans (Tennessee Senate— B 103 /SB 80 and U.S. Congress— B 1034/SB 81), including the

TDs 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 TD shapefiles and/or a list of the Census Blocks in each TD, and please include any changes that were made to any of the TDs prior to any of the elections above.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).



- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.



- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

## **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

## **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
  4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
  5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents



<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Senator Jack Johnson

425 Rep. John Lewis Way N., Suite 702 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

### (c) Place of Compliance.

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

### (d) Protecting a Person Subject to a Subpoena; Enforcement.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

### (e) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. “You” and “Your” shall refer to Jack Johnson, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to 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; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively



or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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 mapititude, 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.

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

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

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

i. 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;

j. 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;

k. 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;

l. 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

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

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 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 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.

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.

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.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);



- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.



R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

## **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

## **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
- 3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
- 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
- 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Representative Kevin Vaughan  
425 Rep. John Lewis Way N., Suite 622 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. “You” and “Your” shall refer to Kevin Vaughan, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to 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; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.



33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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.

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

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

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

i. 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;

j. 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;

k. 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;

l. 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

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

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 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 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.

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.

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.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.



Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

## VIII. Third-Party Discovery

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

## IX. Privileged Documents, Things, and ESI

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of



information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
- 3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
- 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
- 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Speaker Pro Tempore Pat Marsh  
425 Rep. John Lewis Way N., Suite 610 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).



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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. “You” and “Your” shall refer to Pat Marsh, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to 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; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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.

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

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

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

i. 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;

j. 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;

k. 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;

l. 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

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

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 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 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.

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.

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.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**



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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native



files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

### **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

### **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
  4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
  5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the



costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Representative Patsy Hazlewood  
425 Rep. John Lewis Way N., Suite 606 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. “You” and “Your” shall refer to Patsy Hazlewood, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to 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; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.



5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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.

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



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

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

i. 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;

j. 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;

k. 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;

l. 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

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

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 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 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.

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.

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.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).



- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.



- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

### **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

### **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

### C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
  4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
  5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents



<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Senator Paul Rose  
425 Rep. John Lewis Way N., Suite 734 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	UNDEE ERIC ARDSON
	)	UNDE ERIC E. MURP
WILLIAM B. BEE, et al.,	)	UNDE BENITA L. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. You and our shall refer to Paul Rose, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. Defendants collectively refers to William B. Bee, in his official capacity as Governor of the State of Tennessee; Treargett, in his official capacity as Secretary of State of

the State of Tennessee; Mark Hoins, 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 Hounce, in their official capacities as members of the State Election Commission; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. Document is defined to be synonymous in meaning and scope with the term document as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase writings and recordings is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. Legislator means a past or present elected member of the Tennessee House of Representatives ( Tennessee House ) or the Tennessee Senate, including such member's past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member's behalf or subject to the member's control or on behalf of any committee or other body of which the elected member is a member.

5. Redistricting means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. Relating to means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

. Redistricting Plans means collectively the redistricting plans for the Tennessee Senate ( B 103 /SB 80), and the U.S. Congress ( B 1034/SB 81).

8. B 103 and/or SB 80 and/or the Tennessee Senate Plan refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

. B 1034 and/or SB 81 and/or the Congressional Plan refers to the redistricting plan for the Tennessee U.S. ouse of Representatives that was signed into law on February 6, 2022.

10. CD-5 refers to Congressional District 5, as drawn under Congressional Plan B 1034/SB 81.

11. CD-6 refers to Congressional District 6, as drawn under Congressional Plan B 1034/SB 81.

12. CD- refers to Congressional District , as drawn under Congressional Plan B 1034/SB 81.

13. SD-31 refers to Senate District 31, as drawn under the Tennessee Senate Plan B 103 /SB 80.

14. The phrases old plan and/or the previous decade's plan and/or pre-2020 redistricting plan refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. AP refers to Voting Age Population as defined by the United States Census Bureau.

16. C AP refers to Citizen Voting Age Population.

17. B AP refers to Black Voting Age Population.

18. AP refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person's behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms and and or either disjunctively



or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. Persons can include entities, incorporated and not, and entities can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

2 . If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. our response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. ou must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.

33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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— B 103 /SB 80 and U.S. Congress— B 1034/SB 81. 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 mapititude, 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.

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

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

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

i. 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;

j. 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;

k. 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;

l. all Documents Relating to the use of Voting Age Population ( VAP ), Black Voting Age Population ( B VAP ), Hispanic Voting Age Population ( H VAP ), Citizen Voting Age Population ( C VAP ), Black Citizen Voting Age Population ( BC VAP ), Hispanic Voting Age Population ( H VAP ), and/or Total Population in connection with

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

. 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 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 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.

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.

. All Documents Relating to the voting districts or TDs for the Redistricting Plans (Tennessee Senate— B 103 /SB 80 and U.S. Congress— B 1034/SB 81), including the

TDs 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 TD shapefiles and/or a list of the Census Blocks in each TD, and please include any changes that were made to any of the TDs prior to any of the elections above.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);



- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.

Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.



R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

## **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

## **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of

information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.

# UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

Tennessee State Conference of the NAACP, et al.

*Plaintiff*

v.

William B. Lee, in his official capacity as Governor of  
the State of Tennessee, et al.,

*Defendant*

Civil Action No. 3:23-cv-00832

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Representative William Lamberth  
425 Rep. John Lewis Way N., Suite 602 Cordell Hull Bldg., Nashville, TN 37243

*(Name of person to whom this subpoena is directed)*

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: see Attachment A

Place: Electronic Format or, if not available, Sperling & Slater,  
1221 Broadway, Suite 2140, Nashville, TN 37203

Date and Time:

04/22/2024 5:00 pm

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 03/20/2024

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Tennessee State Conference of the NAACP, et al., , who issues or requests this subpoena, are:

Phillip Cramer; 1221 Broadway, Suite 2140, Nashville, TN 37203; pcramer@sperling-law.com; (312) 224-1512

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).



Civil Action No. 3:23-cv-00832

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT A TO SUBPOENA TO PRODUCE DOCUMENTS OR INFORMATION**

Pursuant to Rules 30, 34, and 45 of the Federal Rules of Civil Procedure, you are commanded to produce at the time, date, and place set forth in the Subpoena the following documents, electronically stored information or objects specified below, and permit their inspection, copying, testing, or sampling of the materials in accordance with the Instructions and Definitions set forth below. Further, you are directed to supplement this production as provided by the same Rules.

**INSTRUCTIONS AND DEFINITIONS**

1. “You” and “Your” shall refer to William Lamberth, including past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on your behalf or subject to your control.

2. “Defendants” collectively refers to 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; along with any of their predecessors in office; past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, or agents; and any other persons or entities acting or purporting to act on their behalf or subject to their control.

3. “Document” is defined to be synonymous in meaning and scope with the term “document” as used under Rule 34 of the Federal Rules of Civil Procedure and as the phrase “writings and recordings” is defined in Rule 1001 of the Federal Rules of Evidence, and it includes but is not limited to any computer files, memoranda, notes, letters, emails, printouts, instant messages, ephemeral messages, social media messages, text messages, or databases, and any handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

4. “Legislator” means a past or present elected member of the Tennessee House of Representatives (“Tennessee House”) or the Tennessee Senate, including such member’s past or present employees, legislative office staff, district office staff, committee staff, caucus staff, campaign staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, or other persons or entities acting or purporting to act on the member’s behalf or subject to the member’s control or on behalf of any committee or other body of which the elected member is a member.

5. “Redistricting” means any consideration of the alignment of district boundaries for an entire legislative body, a single legislative district, or districts within a geographic area.

6. “Relating to” means referring to, regarding, consisting of, concerning, pertaining to, reflecting, evidencing, describing, constituting, mentioning, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic.

7. “Redistricting Plans” means collectively the redistricting plans for the Tennessee Senate (HB 1037/SB 780), and the U.S. Congress (HB 1034/SB 781).

8. “HB 1037” and/or “SB 780” and/or the “Tennessee Senate Plan” refers to the redistricting plan for the Tennessee Senate that was signed into law on February 6, 2022.

9. “HB 1034” and/or “SB 781” and/or the “Congressional Plan” refers to the redistricting plan for the Tennessee U.S. House of Representatives that was signed into law on February 6, 2022.

10. “CD-5” refers to Congressional District 5, as drawn under Congressional Plan HB 1034/SB 781.

11. “CD-6” refers to Congressional District 6, as drawn under Congressional Plan HB 1034/SB 781.

12. “CD-7” refers to Congressional District 7, as drawn under Congressional Plan HB 1034/SB 781.

13. “SD-31” refers to Senate District 31, as drawn under the Tennessee Senate Plan HB 1037/SB 780.

14. The phrases “old plan” and/or “the previous decade’s plan” and/or “pre-2020 redistricting plan” refers to the redistricting plans that were passed in 2012 after the 2010 Census.

15. “VAP” refers to “Voting Age Population” as defined by the United States Census Bureau.

16. “CVAP” refers to “Citizen Voting Age Population.”

17. “BVAP” refers to Black Voting Age Population.

18. “HVAP” refers to Hispanic Voting Age Population.

19. In responding to these requests, please produce all responsive documents in your possession, custody, or control. This means that you must produce all responsive documents within your actual possession, custody, or control, as well as such documents which you have the legal right to obtain on demand or the practical ability to obtain from a non-party to this action, including but not limited to any and all documents that you and your counsel and other agents have actually reviewed.

20. All references in these requests to an individual person include any and all past or present employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, predecessors in office or position, and all other persons or entities acting or purporting to act on the individual person’s behalf or subject to the control of such a person.

21. All references in these requests to any entity, governmental entity, or any other type of organization include its past or present officers, executives, directors, employees, staff, interns, representatives, designees, attorneys, advisors, consultants, contractors, agents, and all other persons or entities acting or purporting to act on behalf of such an organization or subject to its control.

22. In construing these document requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms “and” and “or” either disjunctively

or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the singular include the plural.

23. Words or terms used herein have the same intent and meaning regardless of whether the words or terms are depicted in lowercase or uppercase letters.

24. “Persons” can include entities, incorporated and not, and “entities” can include persons and associations thereof. A reference to a person or entity includes their agents past and present.

25. Documents should be produced in their entirety, without abbreviation, redaction, or expurgation; file folders with tabs or labels identifying documents responsive to these requests should be produced intact with the documents; documents attached to each other should not be separated; all emails or documents maintained in electronic form should be produced with all associated metadata and the appropriate load file(s); documents stored as excel files or as a database should be produced in their native format; each page should be given a discrete production number; and color copies of documents should be produced where color is necessary to interpret or understand the contents.

26. Documents should be produced in a form consistent with the Stipulated ESI Agreement entered in this action (see Attachment B).

27. No portion of a request may be left unanswered because an objection is raised to another part of that request. If you object to any portion of a document request, you must state with specificity the grounds of any objections. Any ground not stated will be waived.

28. For any document withheld from production on a claim of privilege or work product protection, provide a written privilege log identifying each document individually and containing all information required by Rule 26(b)(5) of the FEDERAL RULES OF CIVIL PROCEDURE, including

a description of the basis of the claimed privilege and all information necessary for Plaintiffs to assess the privilege claim.

29. If you contend that it would be unduly burdensome to obtain and provide all of the documents called for in response to any document request or any subsection thereof, then in response to the appropriate document request: (a) produce all such documents as are available without undertaking what you contend to be an unreasonable request; (b) describe with particularity the efforts made by you or on your behalf to produce such documents; and (c) state with particularity the grounds upon which you contend that additional efforts to produce such documents would be unreasonable.

30. If any requested document or other potentially relevant document is subject to destruction under any document retention or destruction program, the documents should be exempted from any scheduled destruction and should not be destroyed until the conclusion of this lawsuit or unless otherwise permitted by the Court.

31. In the event that a responsive document has been destroyed or has passed out of your possession, custody, or control, please identify the following information with respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

32. These requests are continuing in nature. Your response must be supplemented if any additional responsive material disclosed becomes available after you serve your response. You must also amend your responses to these requests if you learn that an answer is in some material respect incomplete or incorrect. If you expect to obtain further information or expect the accuracy of a response given to change between the time responses are served and the time of trial, you are requested to state this fact in each response.



33. Plaintiffs expressly reserve the right to supplement these requests to the extent permitted by the applicable rules and under applicable law.

34. Unless otherwise specified, all other document requests concern the period of time from January 1, 2021, to the present.

## **DOCUMENTS REQUESTED**

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 mapititude, 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.

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

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

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

i. 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;

j. 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;

k. 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;

l. 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

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

m. 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;

n. 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;

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

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

a. 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;

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.

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.

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.

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 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 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.

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.

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.

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.

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
<i>Plaintiffs,</i>	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
<i>Defendants.</i>	)	
	)	

**ATTACHMENT B TO SUBPOENA TO PRODUCE DOCUMENTS OR  
INFORMATION: STIPULATED ESI ORDER**

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

TENNESSEE STATE CONFERENCE	)	
OF THE NAACP et al.,	)	
	)	
Plaintiffs,	)	No. 3:23-cv-00832
	)	
v.	)	JUDGE ELI RICHARDSON
	)	JUDGE ERIC E. MURPHY
WILLIAM B. LEE, et al.,	)	JUDGE BENITA Y. PEARSON
	)	
Defendants.	)	
	)	

**[PROPOSED] ORDER REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION**

Pursuant to Federal Rules of Civil Procedure 26(c) & 29(b), this Stipulated Order Regarding Discovery of Electronically Stored Information (“Stipulated ESI Order”) reflects the stipulated agreement made by and between counsel for Plaintiffs and counsel for Defendants (collectively, the “Parties”), in connection with the discovery of electronically stored information.

WHEREAS, counsel for the Parties have met and conferred regarding discovery of electronically stored information (“ESI”);

WHEREAS, the Parties have reached agreement on issues discussed regarding the discovery of ESI;

WHEREAS, the Parties have entered into this Stipulation to facilitate the just, speedy, and cost-efficient conduct of discovery involving ESI, and to promote, to the fullest extent

possible, the resolution of disputes regarding the discovery of ESI and privileged materials without Court intervention;

**IT IS HEREBY ORDERED** that:

**I. Overview**

- A. The Parties are bound by and subject to the terms of this Stipulated ESI Order.
- B. Cooperation. The Parties shall attempt to conduct discovery in a cooperative manner, including without limitation, by reasonably drafting discovery requests and responses in accordance with Federal Rules of Civil Procedure 1 and 26(g)(1); producing ESI in accordance with Federal Rule of Civil Procedure 34; and by meeting and conferring in good faith on topics such as potentially relevant data sources, search methodologies, appropriate search terms, identifying custodians of relevant ESI, and such other issues as may arise during the course of discovery.

**II. Definitions**

- A. “Defendant” as used herein shall mean 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.
- B. “Document” is defined as documents or ESI as set forth in Federal Rule of Civil Procedure 34(a)(1)(A).

- C. “Parties” refers to all Plaintiffs and all Defendants, as well as their officers, directors, employees, and agents.
- D. “Plaintiffs” as used herein shall refer to the 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.
- E. All other terms used herein shall be defined as they are in the Sedona Conference Glossary: E-Discovery & Digital Information Management (Fifth Edition). *See* The Sedona Conference Glossary: eDiscovery & Digital Information Management, Fifth Edition, 21 SEDONA CONF. J. 263 (2020).

### **III. Custodians**

- A. To the extent such ESI, documents, and things exist and subject to the Parties’ objections to such production and the resolution of those objections, the Parties shall produce responsive, non-privileged ESI, documents, and things from a list of custodians that the Parties will attempt to agree upon. The Parties will cooperate with each other in advising which of their custodians are likely to have responsive information in their possession, custody, or control.
- B. The Parties will be responsible for identifying, searching, and producing from, all non-custodial data sources (including, but not limited to, databases, information archives, and shared drives) that are reasonably likely to have responsive information.

#### **IV. Preservation and Production of Documents**

##### **A. Preservation**

1. The Parties agree that by preserving documents, things, and ESI for the purpose of this litigation, they are not conceding that such material is discoverable, nor are they waiving any claim of privilege.
2. This Stipulated ESI Order does not modify any Party's obligation to maintain and preserve documents, things, and ESI where otherwise required by law, pursuant to a court order,, or in response to other anticipated litigation.
3. Section IV.B.1 is intended only to limit the Parties' affirmative preservation obligations under the Federal Rules of Civil Procedure. It should not be construed to impart an affirmative obligation to preserve categories of ESI not listed in Section IV.B.1.

##### **B. Limitations on Obligations to Preserve.** For purposes of this action, the scope of the Parties' preservation obligations is limited as described in this section.

1. ESI. The Parties do not need to take specific, affirmative steps to preserve for purposes of this litigation the following categories of ESI:
  - a) Delivery or read receipts of e-mail;
  - b) Logs or other data from video-conferencing (including, *e.g.*, Teams or Zoom) or instant messaging tools involving (1) counsel of record for the Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff);

- c) Temporary or cache files, including internet history, web browser cache, and cookie files, wherever located;
- d) Internally facing server system logs;
- e) Externally facing or hosted file sharing system logs;
- f) System data from photocopiers or fax machines;
- g) Auto-saved copies of electronic documents;
- h) Deleted, slack, fragmented, or other data only accessible by forensics;
- i) Random access memory (“RAM”), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system;
- j) Logs of or other data from audio calls (including, *e.g.*, landline phones, mobile devices, and Voice Over Internet Protocol (“VOIP”)) made to or from (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff); and
- k) Voicemail messages on the voicemail systems of (1) counsel of record for Plaintiffs in this litigation (and their staff) and/or (2) counsel of record for Defendants in this litigation (and their staff).

2. Duplicates. When duplicate copies<sup>1</sup> of relevant ESI exist in more than one location, this Stipulated ESI Order does not require a Party to preserve all duplicates as follows:

- a) ESI existing or stored on mobile or portable devices (*e.g.*, smartphones, tablets, thumb drives, CDs, DVDs, etc.) or file sharing sites does not need to be preserved pursuant to this Order *provided that* duplicate copies of the ESI, including metadata, are preserved in another location reasonably accessible to the Party.
- b) ESI on backup tapes, continuity of operations or disaster recovery systems, data or system mirrors or shadows, and other systems that are used primarily for the purpose of system recovery or information restoration and are not reasonably accessible (“Backup Systems”) need not be preserved pursuant to this Order *provided that* duplicate copies of relevant ESI have been preserved in another reasonably accessible location. However, if a Party knows that relevant ESI exists *only* on a Party’s Backup System, the Party will take reasonable steps to preserve ESI on the Backup System until the Parties can agree on how and when the ESI will be preserved or produced. If the

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<sup>1</sup> “Duplicates” in the context of ESI are copies of identical documents identified with matching MD-5 hashes, which is a mathematically-calculated 128-bit value used to create a unique identifier for an electronic file.



Parties cannot reach agreement, they will seek a ruling from the Court.

3. Documents Created by Counsel of Record. The Parties agree that they do not need to take specific, affirmative steps to preserve for purposes of this litigation relevant documents, things, or ESI (including internal communications, drafts, versions, and collaboration on case-related work) created by and, if shared with any other(s), exchanged *solely among*: (a) counsel of record for Plaintiffs in this litigation (and their staff) and/or (b) counsel of record for Defendants in this litigation (and their staff).

- C. The Parties will not seek discovery of documents, things, and ESI that they have agreed not to preserve pursuant to Section IV.B above. As provided in Section IX below, the Parties do not need to list such items on a privilege log prepared and served in connection with discovery in this case.

## **V. Production Format for ESI**

### **A. Production Format and Numbering**

1. Black and white content shall be scanned or converted to single page Tagged Image File Format (“TIFF”), using CCITT Group IV compression at 300 d.p.i. and that accurately reflects the full and complete information contained in the original document. One image file shall represent one page of the document. Color content shall be produced as JPEG files at 300 d.p.i. using a high-quality setting. Nothing in this provision prevents a Party from scanning, converting, and/or producing documents or content as color

images. Images shall be accompanied by an Opticon/Concordance image load file (.opt) which accurately conveys document unitization. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall, to the extent reasonably practicable, also be imaged so that this information is captured in the produced image file. Each TIFF or JPEG image must be named according to its Bates-number, i.e., [Bates-number].[extension].

2. For ESI and scanned hard copy paper documents, the text of all pages in the document must be saved as one file. If the extracted text of a native document does not exist or does not represent the entire document, Optical Character Recognition (“OCR”) will be provided instead.
3. All productions will provide a consistent load file with the same number and order of fields regardless of the types of documents in the production.
4. All images (*e.g.*, TIFF, JPEG) will be produced in a directory labeled IMAGES. Subdirectories may be created so that one directory does not contain more than 5000 files.
5. All native files (with the proper Windows-associated extension) will be produced in a directory labeled NATIVE. Subdirectories may be created so that one directory does not contain more than 5000 files.
6. An image cross reference file and a load file containing all required metadata fields will be produced in a directory labeled DATA.
7. All extracted text and/or OCR will be produced in a directory labeled TEXT. OCR is searchable text generated for scanned documents or native

files that is in ASCII format, where all pages in the document will be represented in one file. The Parties will provide a text file for all documents, even if the size of the file is zero. Subdirectories may be created so that one directory does not contain more than 5000 files.

8. Except for native files, the Parties will produce responsive documents Bates-stamped with a prefix to indicate the Party producing the documents. For native files, which cannot be Bates-stamped, the Parties will rename the file with its corresponding Bates-number [Bates-number].[extension] with a placeholder image numbered and endorsed as appropriate for that record and including “RECORD PRODUCED AS NATIVE FILE” and the original file name. The bates number shall be unique, have a consistent format within and between productions, have the same number of digits, and use leading zeros where necessary.

- B. Document Text. All unredacted documents should be provided with complete document-level extracted text files. In the event a document contains text which is redacted, text files consisting of OCR should be provided for any unredacted portions of the documents. Document text files should be provided in a Full text folder, with the beginning production number and file path location of the text provided in the .dat (located in the Data folder).
- C. Spreadsheets. Excel or other types of spreadsheets shall be produced as native files with all cells unlocked. For each Excel or spreadsheet file, a placeholder image as described for native files in Section V.A.8 above must be included in the production.

- D. Presentations. PowerPoint files shall be produced as both (1) as color images with extracted text and (2) as native files with all notes unaltered and viewable. For each PowerPoint, a placeholder image as described for native files in Section V.A.8 above must be included in the production.
- E. Audio and Video Files. Audio files and video files shall be produced as native files unless the native form is a proprietary format, in which case the file(s) should be converted into a non-proprietary format that can be played using Windows Media Player. For each audio or video file, a placeholder image as described for native files in Section V.A.8 above shall be included in the production.
- F. Social Media Content. The Parties will meet and confer to discuss production format if a producing party identifies social media content that is potentially responsive to a request.
- G. Text Messages. The Parties will meet and confer to discuss production format if a producing party identifies text messages that are potentially responsive to a request.
- H. Other Documents, Things, and ESI. For production of tangible things and production of information from a structured database, proprietary software, vendor-managed software, or other source from which native production is not reasonably practicable, the Parties will meet and confer before making any production to attempt to agree on a reasonable and proportional form of production that maintains the integrity of the tangible things or documents.

- I. Embedded Files. In cases where embedded material does not render in a fully-reviewable manner in the parent document, embedded files will be produced as family groups. Embedded files should be assigned production numbers that directly follow the production numbers on the documents within which they are embedded.
- J. Color. Documents containing color need not be produced in color unless necessary to legibly read or understand the meaning or content of the document. The producing Party shall cooperate with a Party who reasonably requests re-production of a document in color, in which case the document shall be produced in color 24-bit JPEG or native format.
- K. Load File Format. The Parties shall provide a metadata load file compatible with industry standard e-discovery review and analysis platforms and containing the fields specified in Appendix A. Typically, this is a Concordance-style DAT file.”
- L. The Parties will meet and confer regarding a different production format, such as native files, should the producing party find that it is not possible or unduly burdensome to adhere to the production format specified in this section for certain documents, in light of the format in which the documents are maintained in the ordinary course of business.
- M. Metadata to be Produced. The Parties will produce the metadata specified in Appendix A, to the extent that such information metadata exists and that collecting and producing such information is not unduly burdensome based on the resources of the producing party.

N. Deduplication. The Parties shall make reasonable efforts to deduplicate ESI.

If not unduly burdensome, ESI shall be globally deduplicated across all custodial and non-custodial sources. Documents are considered exact duplicates if a document family or stand-alone file has a matching hash value (e.g., MD5 or SHA-1) as compared against the same document type (i.e., family or stand-alone file). The names of all custodians who were in possession of a document prior to deduplication will be populated in a metadata field, consistent with the specifications above in Appendix A.

O. Email Threading. The Parties may use email thread suppression. As used in this Stipulated ESI Order, email thread suppression means reducing duplicative production of email threads, with the effect of producing the most inclusive email containing the thread of emails, as well as all attachments within the thread, and excluding emails constituting exact duplicates of emails within the produced string. For purposes of this paragraph, only email messages in which the parent document and all attachments are exactly the same will be considered duplicates. Duplicative emails withheld under this paragraph need not be included on the producing party's privilege log.

P. Time Zone: When producing documents, Central Standard Time ("CST") shall be selected as the time zone.

Q. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

R. In the event that any of the requirements of Part V of this agreement prove unduly burdensome as to any party or as to any particular materials, the requesting and producing parties will confer in good faith to identify less burdensome alternative production formats that are reasonable and proportional to the needs of the case.

## **VI. Production Format for Hard Copy Documents**

- A. Hard copy documents shall be produced as a single TIFF file per page with complete document-level OCR text files. The unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. The relationship of documents (including attachment relationship and file associations) shall be maintained throughout the scanning or conversion process.
- B. Oversized documents must be produced as PDF files, JPEG images, or in hard copy form so as to retain the resolution and scale of the original document.

## **VII. Production Specifications**

- A. Responsive documents and ESI will be produced via .zip file(s) uploaded to an electronic file transfer site, in accordance with the written instructions provided by counsel for the Requesting Party or as otherwise agreed by the Parties. The .zip file(s) shall be encrypted, and the Producing Party will provide a decryption key in a communication separate from the production itself.
- B. The Parties will remove encryption or password protection from all ESI produced. If that is not possible, the producing party will provide passwords or assistance needed to open encrypted files.

## **VIII. Third-Party Discovery**

- A. A Party that issues a non-party subpoena (“Issuing Party”) will include a copy of this Stipulated ESI Order with the subpoena and will request that non-parties produce documents in accordance with the specifications set forth herein. Non-parties may assert any objections they maintain to the terms of this Order and the Court will separately rule on any such objections.
- B. The Issuing Party will produce any documents obtained under a subpoena to all other Parties. Any documents that the Issuing Party does not intend to process for its own use may be disseminated to all other Parties in the format in which the Issuing Party received such documents, except as subject to the Bates-stamping requirements of Section V.A.8. If the Issuing Party subsequently processes any such documents, the Issuing Party will produce those processed documents to all other Parties.

## **IX. Privileged Documents, Things, and ESI**

- A. General. If any discovery request appears to call for the production of documents, things, or ESI covered by Section IV.B., the responding party is not required to produce or identify such information on a privilege log. However, if a party preserves relevant documents, things, or ESI covered by Section IV.B., in order to support a claim or defense in this case, the Party shall produce such information or identify it on a privilege log notwithstanding this subsection.
- B. The production of ESI shall not constitute a waiver of the attorney-client privilege, work product protection, or any other applicable privilege or protection, even though there is a failure to take reasonable steps to prevent production of



information covered by the attorney-client privilege or work product protection, or a failure to take reasonable steps to rectify the error.

C. Privilege Logs and Redaction.

1. Redaction. Where a discovery request appears to call for the production of documents, things, or ESI that contain both privileged and non-privileged responsive information, the responsive information shall be produced, but the privileged information may be redacted.
2. For all documents withheld based on privilege or other protection, the Parties will provide logs that comply with the requirements under the Federal Rules of Civil Procedure. At a minimum, the privilege log must contain the following:
  - a) A unique and logical document identification number;
  - b) Date the document was prepared or created;
  - c) Document type;
  - d) Name and title of author(s)
  - e) Custodian;
  - f) Name and title of recipient(s) (including all individuals in the “to” or “cc” or “BCC” fields);
  - g) Name and title of any attorney(s) included in the communication;
  - h) The privilege or protection asserted;
  - i) The basis for the privilege or protection asserted;

- j) A description of the document that, without revealing information itself privileged or protected, will enable the requesting party to assess the claim;
  - k) Purpose of preparing the document.
- 3. The Parties agree that communications between attorneys and clients regarding the current lawsuit and not shared with any third parties may be withheld if privileged and do not need to be logged.
- 4. Email Threads. An email thread for which a party claims a privilege may be logged in a single entry provided that such entry identifies all senders and recipients appearing at any point in the thread, and provided that any included emails or portions of emails that are not subject to privilege are properly produced.
- 5. Production Timeline. Privilege logs may be produced on a rolling basis, with reasonable efforts made to produce the privilege log within 60 days after each associated production. If any log is produced less than 30 days before the close of discovery, the receiving party may, notwithstanding the date of the close of discovery, review and register complaints about said log(s) no later than 30 days after the date of receipt and shall have the right to have those complaints resolved and have any non-privileged documents produced.

## **X. Costs**

- A. The costs, including attorney fees and vendor fees, of eDiscovery normally shall be borne by the producing party. However, the Court may apportion the

costs of eDiscovery upon a showing of good cause. The Court, on motion of one of the parties, will consider the following non-exclusive factors in determining whether any or all eDiscovery costs should be borne by the requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information.

Based on the foregoing, **IT IS SO ORDERED.**

DATED: November 13, 2023

s/ Eli Richardson  
**ELI RICHARDSON**  
**UNITED STATES DISTRICT JUDGE**

s/ Eric E. Murphy  
**ERIC E. MURPHY**  
**UNITED STATES CIRCUIT JUDGE**

s/ Benita Y. Pearson  
**BENITA Y. PEARSON**  
**UNITED STATES DISTRICT JUDGE**

## APPENDIX A

Field Name	Definition
<b>Begin_Bates</b>	Bates number for the first image of a document (or the Bates number of the placeholder page for a native document).
<b>End_Bates</b>	Bates number for the last image of a document (or the Bates number of the placeholder page for a native document).
<b>Begin_Attach</b>	<u>Only</u> for document families, <sup>2</sup> provide Bates number for the first image of the first attachment or embedded file. Leave this field blank if there is no document family.
<b>End_Attach</b>	<u>Only</u> for document families, provide Bates number for the last image of the last attachment or embedded file. Leave this field blank if there is no document family.
	Bates number of the parent document (filled in only for “child” documents).
<b>PgCount</b>	The number of images produced for this document (1 for placeholder).
<b>All Custodians</b>	Name of all custodians who had a copy of the document before deduplication.
<b>From</b>	“From” field in email.
<b>To</b>	“To” field in email.
<b>CC</b>	“CC” field in email.
<b>BCC</b>	“BCC” field in email.
<b>Subject</b>	“Subject” field in email.
<b>Attachments</b>	File names of the attachments.
<b>DateSent</b>	DateSent field from email (format: 9/28/2012).

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<sup>2</sup> Document Family means a group of related documents, including: (1) paper documents that were grouped together or physically attached by clips, staples, binding, folder, etc.; (2) email with its attachment(s); and (3) files with embedded documents

<b>TimeSent</b>	TimeSent field from email (format 1:16 or 13:16:34).
<b>Redacted</b>	“Yes” if the document has been redacted.
<b>Confidential</b>	Confidential Designation (if any).
<b>MD5Hash</b>	The MD5 hash value calculated when the file was collected or processed.
<b>Orig_File Paths</b>	Path to location from which original file was collected. If production was deduplicated, include all file paths from which original files were collected.
<b>NATIVELINK</b>	The path to the native file on the production media.
<b>Native_filename</b>	Original name of the native file when the file was collected or processed.
<b>Text File Path</b>	Path to the text file on the production media.
<b>Date File Created</b>	The date the ESI was created.
<b>Time File Created</b>	The time the file was created (format 1:16 or 13:16:34).
<b>Date File Last Modified</b>	The date the ESI was last modified.
<b>Time Modified</b>	The time the ESI was last modified (format 1:16 or 13:16:34).
<b>File Size</b>	The file size in bytes.
<b>File Ext.</b>	The file extension associated with the file.
<b>Confidentiality</b>	Confidential treatment requested.
<b>Redacted</b>	Indicates where a record contains redactions.