

EXHIBIT 9

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT DONNA BARRETT'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Donna Barrett, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling local election commission vacancies in certain counties located in CD-5, CD-6, CD-7. Defendant is not responsible for filling local election commission vacancies in SD-29, SD-30, SC 31, or SD-32.

Defendant engaged in the above activities in preparation for the 2022 primary and general elections. Defendant anticipates engaging in the same activities to prepare for the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant is not aware of any complaints regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

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Case No. 3:23-cv-00832

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**DEFENDANT DONNA BARRETT'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Donna Barrett, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT JUDY BLACKBURN'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Judy Blackburn, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is not responsible for filling local election commission vacancies in counties located in CD-5, CD-6, CD-7, SD-29, SD-30, SC 31, or SD-32.

Defendant engaged in the above activities in preparation for the 2022 primary and general elections. Defendant anticipates engaging in the same activities to prepare for the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant is not aware of any complaints regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

VERIFICATION

I, Judy Blackburn, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

Judy Blackburn
STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF Hamilton)

Subscribed and sworn before me this 16 day of Jan, 2024.

Teresa West
NOTARY PUBLIC



My commission expires 3/31/27

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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

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

/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT JUDY BLACKBURN'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Judy Blackburn, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant possesses a laminated map of the current Congressional districts and

Tennessee Senate districts. She will allow inspection of this map at a time and location agreeable to the parties. Aside from this map, Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information

disproportionate to the needs of this case by asking for “All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
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CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT JIMMY ELDRIDGE'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Jimmy Eldridge, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is not responsible for filling local election commission vacancies in CD-5, CD-6, CD-7, SD-29, SD-30, SC 31, or SD-32.

Defendant joined the State Election Commission in April 2021 and engaged in the above activities in preparation for the 2022 primary and general elections. Defendant anticipates engaging in the same activities to prepare for the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant is not aware of any complaints regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

VERIFICATION

I, Jimmy Eldridge, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.


STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF Madison)

Subscribed and sworn before me this 12 day of January, 2024.


NOTARY PUBLIC



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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT JIMMY ELDRIDGE'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Jimmy Eldridge, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

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

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

l.s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**MARK GOINS'S RESPONSE
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Mark Goins, in his official capacity as Tennessee Coordinator of Elections, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 in that it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the instruction that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan, and SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the 2022 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32, and will not implement the 2024 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32.

Tennessee has a decentralized system for conducting elections and thus most of the preparation for elections is conducted at the local level by the county election commissions ([Tennessee Secretary of State: Division of Election: Election Commissions \(tnsos.org\)](https://www.tnsos.org)).

However, pursuant to Tenn. Code Ann. § 2-11-201(a)(1), as the Coordinator of Elections for the State of Tennessee, Defendant has the duty to “[g]enerally supervise all elections” and thus, in addition to the duties set forth in Tenn. Code Ann. § 2-11-201, performs certain activities in preparation for state and federal elections, including but not limited to the following:

- Receive and review nominating petitions from Presidential Preference Primary candidates not certified by the chair of a statewide political party;
- Receive and review nominating petitions from delegate-candidates in the Presidential Preference Primary;
- Review and approve sample ballots from each county for the March Presidential Preference Primary and County Primary elections;
- Ensure that absentee ballots are timely mailed to military & overseas voters;
- Publicly examine the returns from the March Presidential Preference Primary and County primary and declare who has been nominated for office;
- Review and approve sample ballots from each county for the August State and Federal Primary and County General elections;
- Receive and review nominating petitions filed by Independent Presidential candidates;
- Receive and review nominating petitions filed by US House of Representatives and US Senate Candidates;
- Publicly examine the returns from the August State and Federal Primary Elections and declare who has been nominated for office.

Interrogatory 2:

Describe generally any complaints received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant objects to this interrogatory as vague as it does not identify *who* received the complaints. Defendant interprets this interrogatory as directed at any complaints he received.

Although Defendant did not implement the new congressional districts in CD-5, CD-6, or CD-7 for the 2022 primary and general elections, some organizations and individuals complained to Defendant about counties misassigning voters in congressional districts for the 2022 general election. In fact, the League of Women Voters and two others sued the Davidson County Election Commission, Jeff Roberts (the Administrator of Elections for Davidson County), Governor Lee, Secretary Hargett, and Defendant in Chancery Court in Davidson County over misassignment of voters in Davidson County. Aside from the Plaintiffs in that litigation, Defendant cannot recall a specific individual who complained to him about the implementation of a new congressional district. It is possible that a search of Defendant's email would identify additional complaints.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) the Tennessee Senate Plan—for SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) the Congressional Plan—for CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

As the Coordinator of Elections, Defendant “[g]enerally supervise[d]” the county election commissions’ preparation for elections in accordance with Tenn. Code Ann. § 2-11-201. Thus, Defendant engaged in routine conversations regarding election preparedness with staff in the

Coordinator of Elections' office, Secretary Hargett, and county election commissioners across Tennessee. Defendant does not recall specific conversations regarding the "implementation of" SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 7:¹

Identify each legislator who served on the House Select Committee on Redistricting during the 2022 legislative session of the Tennessee General Assembly, and, if known to You, describe all steps and the process the House Select Committee on Redistricting undertook to implement and adopt the Tennessee State House of Representatives Redistricting Guidelines. This interrogatory should identify all individuals who worked on the implementation of Tennessee State House of Representatives Redistricting Guidelines, including all individuals who participated in implementing the redistricting plans, including all staff members, consultants, attorneys, or any other third-party individuals.

Answer: Defendant objects to Interrogatory #7 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #7 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #7 as overly broad because it asks Defendant to describe "all steps" the House Select Committee took to implement and adopt the redistricting guidelines and to identify "all individuals" who worked on or participated in in implementing the redistricting guidelines.

Subject to the foregoing objections, Defendant responds as follows:

¹ Defendant notes that Plaintiffs First Set of Interrogatories did not include Interrogatories numbered 5 or 6. Defendant has numbered his responses to match Plaintiffs' numbering.

Defendant has no knowledge responsive to Interrogatory #7 beyond what is publicly available on the General Assembly's website and archives ([House Redistricting Committee - TN General Assembly](#); [House Redistricting Committee - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 8:

Identify each legislator who served on the Senate Ad Hoc Committee on Redistricting during the 2022 legislative session of the Tennessee General Assembly, and if known to you, describe all steps and the process the Senate Ad Hoc Committee on Redistricting undertook to implement and adopt its version of the Redistricting Guidelines. This interrogatory should identify all individuals who worked on the implementation of the Tennessee Senate's version of the Redistricting Guidelines, including all individuals who participated in implementing the redistricting plans, including all staff members, consultants, attorneys, or any other third-party individuals.

Answer: Defendant objects to Interrogatory #8 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #8 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #8 as overly broad because it asks Defendant to describe "all steps" the Senate Ad Hoc Committee took to implement and adopt the redistricting guidelines and to identify "all individuals" who worked on or participated in in implementing the redistricting guidelines and redistricting plans.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #8 beyond what is publicly available on the General Assembly's website and archives ([senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate](#)

[Redistricting - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 9:

Identify and list the dates for any and all hearings, including hearings convened and held by (1) the House Select Committee and (2) the Senate Ad Hoc Committee, concerning the redistricting plans for the Tennessee Senate (HB 1037/SB 780) and U.S. Congress (HB 1034/SB 781). Also identify any such hearings in which members of the public were invited to comment on the proposed redistricting plans and/or submit draft maps for legislative consideration. This interrogatory response should include hearings permitting only limited public comment and should include the duration, scheduled and actual date of each hearing and the time allotted for public comment.

Answer: Defendant objects to Interrogatory #9 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #9 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #9 beyond what is publicly available the General Assembly's website and archives ([House Redistricting Committee - TN General Assembly](#); [House Redistricting Committee - TN General Assembly \(archive.org\)](#); [senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate Redistricting - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 10:

Identify each legislator who served on the Senate Judiciary Committee during the 2022 legislative session of the Tennessee General Assembly.

Answer: Defendant objects to Interrogatory #10 because it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #8 because it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #10 beyond what is publicly available the General Assembly's website ([Senate Judiciary Committee - TN General Assembly](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 11:

Identify and describe any and all proposed amendments to the Congressional Plan—for CD-5, CD-6, and CD-7. This interrogatory response should describe all steps You undertook, and factors You considered, in assessing and evaluating such amendments.

Answer: Defendant objects to Interrogatory #11 because it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #11 because it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory

#11 to the extent it assumes a contested fact—that Defendant took steps or considered factors in assessing or evaluating proposed amendments to for CD-5, CD-6, and CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not assess or evaluate any proposed amendments to CD-5, CD-6, and CD-7. Defendant has no knowledge responsive to Interrogatory #11 beyond what is publicly available the General Assembly’s website (HB 1034 - [Tennessee General Assembly Legislation \(tn.gov\)](https://www.tn.gov); SB 0781 - [Tennessee General Assembly Legislation \(tn.gov\)](https://www.tn.gov)), contained in Defendant’s prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs’ Requests for Production.

Interrogatory 12:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #12 because it refers to 14 interrogatories but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #12 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered interrogatories 1-4 and is not aware of any other individuals with knowledge of the answers to these interrogatories.

To the extent there are individuals mentioned in the previously identified, publicly available information on the General Assembly's website or archives or referenced in documents to be produced in response to Plaintiffs' Requests for Production that may be responsive to Interrogatories #7-11, Defendant would refer Plaintiffs to those resources. Aside from the information contained in those resources and Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, Defendant is not aware of any other individuals with knowledge of the answers to interrogatories #7-11.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

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

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

/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**MARK GOINS'S RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Mark Goins, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks “All Documents Relating to any legislation discussed, considered or passed,” without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant is not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as overly broad and seeking irrelevant information. The entire scope of Defendant's legislative agenda and legislative priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent that it

seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for “All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE: Defendant is not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Aside from the publicly available documents that Defendant identified in response to Plaintiffs' interrogatories, which Plaintiffs have the same ability to obtain as Defendant, Defendant noted that documents that will be produced in response to these requests for production may also contain information responsive to Plaintiffs' interrogatories.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT MIKE MCDONALD'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Mike McDonald, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling local election commission vacancies in certain counties located in CD-5, CD-6, and CD-7. Defendant is not responsible for filling local election commission vacancies in SD-29, SD-30, SC 31, or SD-32.

Defendant's duties are ongoing and he performed them before the 2022 primary and general elections and before the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant does not remember receiving any complaints for the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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

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/s/ Ryan N. Henry

Counsel for Defendants

VERIFICATION

I, Mike McDonald, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

Michael Ray McDonald

STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF SUMNER)

Subscribed and sworn before me this 12 day of January, 2024.

David Mueller

NOTARY PUBLIC



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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT MIKE MCDONALD'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Mike McDonald, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

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

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/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT SECONDRA MEADOWS'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Secondra Meadows, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling local election commission vacancies in certain counties located in CD-6. Defendant is not responsible for filing local election commission vacancies in CD-6, CD-7, SD-29, SD-30, SC 31, or SD-32.

Defendant's duties are ongoing and she performed them before the 2024 primary and general elections. Defendant was not a State Election Commissioner when the Commission was preparing for the 2022 elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant does not remember receiving any complaints for the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

VERIFICATION

I, Secondra Meadows, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

Secondra Meadows

STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF Hamilton)

Subscribed and sworn before me this 12 day of January, 2024.

Tobin Smith

NOTARY PUBLIC

commission exp. Aug 12, 2026



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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT SECONDR A MEADOWS'
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Secondra Meadows, in her official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

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

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

/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**TRE HARGETT'S RESPONSE
TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Tre Hargett, in his official capacity as Tennessee Secretary of State, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 in that it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the instruction that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the 2022 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32, and will not implement the 2024 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32.

Additionally, other than generally supervising the State Election Coordinator pursuant to Tenn. Code Ann. § 2-11-201(a), he did not prepare for the 2022 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32 and will not prepare for the 2024 primary and general elections in CD-5, CD-6, CD-7, SD-29, SD-30, SD-31, or SD-32.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Although Defendant did not implement the new congressional districts in CD-5, CD-6, or CD-7 for the 2022 primary and general elections, some organizations and individuals complained to Defendant about counties misassigning voters in congressional districts for the 2022 general election. In fact, the League of Women Voters and two others sued the Davidson County Election Commission, Jeff Roberts (the Administrator of Elections for Davidson County), Governor Lee, Defendant, and Coordinator Goins in Chancery Court in Davidson County over misassignment of voters in Davidson County. Aside from the Plaintiffs in that litigation, Defendant cannot recall a specific individual who complained to him about the implementation of a new congressional district. It is possible that a search of Defendant's email would identify additional complaints.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) the Tennessee Senate Plan—for SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) the Congressional Plan—for CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Because Defendant generally supervises the State Election Coordinator pursuant to Tenn. Code Ann. § 2-11-201(a), defendant does have occasional conversations with the Coordinator of Elections regarding election preparedness. Defendant does not recall specific conversations regarding the “implementation of” SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

Identify each legislator who served on the House Select Committee on Redistricting during the 2022 legislative session of the Tennessee General Assembly, and, if known to You, describe all steps and the process the House Select Committee on Redistricting undertook to implement and adopt the Tennessee State House of Representatives Redistricting Guidelines. This interrogatory should identify all individuals who worked on the implementation of Tennessee State House of Representatives Redistricting Guidelines, including all individuals who participated in implementing the redistricting plans, including all staff members, consultants, attorneys, or any other third-party individuals.

Answer: Defendant objects to Interrogatory #5 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #5 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #5 as overly broad because it asks Defendant to describe “all steps” the House Select Committee took to implement and adopt the redistricting guidelines and to identify “all individuals” who worked on or participated in in implementing the redistricting guidelines.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #5 beyond what is publicly available on the General Assembly’s website and archives ([House Redistricting Committee - TN General](#)

[Assembly; House Redistricting Committee - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 6:

Identify each legislator who served on the Senate Ad Hoc Committee on Redistricting during the 2022 legislative session of the Tennessee General Assembly, and if known to you, describe all steps and the process the Senate Ad Hoc Committee on Redistricting undertook to implement and adopt its version of the Redistricting Guidelines. This interrogatory should identify all individuals who worked on the implementation of the Tennessee Senate's version of the Redistricting Guidelines, including all individuals who participated in implementing the redistricting plans, including all staff members, consultants, attorneys, or any other third-party individuals.

Answer: Defendant objects to Interrogatory #6 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #6 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #6 as overly broad because it asks Defendant to describe "all steps" the Senate Ad Hoc Committee took to implement and adopt the redistricting guidelines and to identify "all individuals" who worked on or participated in implementing the redistricting guidelines.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #7 beyond what is publicly available on the General Assembly's website and archives ([senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate Redistricting - TN General Assembly \(archive.org\)](#)) or contained in Defendant's prior briefing in this

litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 7:

Identify and list the dates for any and all hearings, including hearings convened and held by (1) the House Select Committee and (2) the Senate Ad Hoc Committee, concerning the redistricting plans for the Tennessee Senate (HB 1037/SB 780) and U.S. Congress (HB 1034/SB 781). Also identify any such hearings in which members of the public were invited to comment on the proposed redistricting plans and/or submit draft maps for legislative consideration. This interrogatory response should include hearings permitting only limited public comment and should include the duration, scheduled and actual date of each hearing and the time allotted for public comment.

Answer: Defendant objects to Interrogatory #7 to the extent it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #7 to the extent it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #7 beyond what is publicly available the General Assembly's website and archives ([House Redistricting Committee - TN General Assembly](#); [House Redistricting Committee - TN General Assembly \(archive.org\)](#); [senredistrictingcriteria.pdf \(tn.gov\)](#); [Senate Redistricting - TN General Assembly \(archive.org\)](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 8:

Identify each legislator who served on the Senate Judiciary Committee during the 2022 legislative session of the Tennessee General Assembly.

Answer: Defendant objects to Interrogatory #8 because it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #8 because it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has no knowledge responsive to Interrogatory #8 beyond what is publicly available the General Assembly's website ([Senate Judiciary Committee - TN General Assembly](#)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 9:

Identify and describe any and all proposed amendments to the Congressional Plan—for CD-5, CD-6, and CD-7. This interrogatory response should describe all steps You undertook, and factors You considered, in assessing and evaluating such amendments.

Answer: Defendant objects to Interrogatory #9 because it seeks information that is in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Interrogatory #9 because it seeks information in the possession of third parties and information not within the possession, custody, control, or knowledge of Defendant. Defendant also objects to Interrogatory #9 to the extent it assumes a contested fact—that Defendant took steps or considered factors in assessing or evaluating proposed amendments to for CD-5, CD-6, and CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not assess or evaluate any proposed amendments to CD-5, CD-6, and CD-7. Defendant has no knowledge responsive to Interrogatory #9 beyond what is publicly available the General Assembly's website (HB 1034 - [Tennessee General Assembly Legislation \(tn.gov\)](https://www.tn.gov); SB 0781 - [Tennessee General Assembly Legislation \(tn.gov\)](https://www.tn.gov)), contained in Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, or contained in documents to be produced in response to Plaintiffs' Requests for Production.

Interrogatory 10:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #10 because it refers to 14 interrogatories but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #10 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered interrogatories 1-4 and is not aware of any other individuals with knowledge of the answers to these interrogatories.

To the extent there are individuals mentioned in the previously identified, publicly available information on the General Assembly's website or archives or referenced in documents to be produced in response to Plaintiffs' Requests for Production that may be responsive to Interrogatories

#5-9, Defendant would refer Plaintiffs to those resources. Aside from the information contained in those resources and Defendant's prior briefing in this litigation, *see* Dkts. 43, 49, Defendant is not aware of any other individuals with knowledge of the answers to interrogatories #5-9.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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

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

/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**SECRETARY HARGETT'S RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Secretary of State Trey Hargett, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks “All Documents Relating to any legislation discussed, considered or passed,” without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant is not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as overly broad and seeking irrelevant information. The entire scope of Defendant's legislative agenda and legislative priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent that it

seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for “All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

Subject to the foregoing objections, documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Documents produced in *Akilah Moore, et al. v. Governor Bill Lee*, No. 22-0287-IV (Tenn.Ch.) are under review for responsiveness. Defendant will also undertake a search of electronic documents using search terms agreed to by the Parties for the appropriate time-period, and the resulting documents will be assessed for responsiveness, privilege, or other protection. Until this occurs, it is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant is not aware of any responsive documents in his possession and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or "VTDs" for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the

Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Aside from the publicly available documents that Defendant identified in response to Plaintiffs' interrogatories, which Plaintiffs have the same ability to obtain as Defendant, Defendant noted that documents that will be produced in response to these requests for production may also contain information responsive to Plaintiffs' interrogatories.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT BENNIE SMITH'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Bennie Smith, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling vacancies in SD-29, SD-30, SC 31, and SD-32. Defendant is not responsible for filling vacancies in CD-5, CD-6, or CD-7.

Defendant's duties are ongoing and he anticipates performing them before the 2024 primary and general elections. Defendant was not a State Election Commissioner when the Commission was preparing for the 2022 elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant does not remember receiving any complaints for the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections. Defendant was not a State Election Commissioner when the Commission was preparing for the 2022 elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7 in his capacity as a State Election Commissioner.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Miranda Jones
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Senior Assistant Attorney General
Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT BENNIE SMITH'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Bennie Smith, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., In re Terrorist Attacks on Sept. 11, 2001, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. *See Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); *see also New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant

objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

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

entity, any local elected official in Tennessee, any consultant, any expert, any law firm or attorney, any vendor, any other political or community group or organization, or any member of the public.

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Defendant owns and maintains a public website that provides analytics of voter turnout data on an interactive platform ("dashboard"). The website and embedded dashboard may be accessed, respectively, at <https://www.benniesmith.com> and <https://benniesmith.com/analytics/>. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Defendant owns and maintains a public website that provides analytics of voter turnout data on an interactive platform ("dashboard"). The website and embedded dashboard may be accessed, respectively, at <https://www.benniesmith.com> and <https://benniesmith.com/analytics/>. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

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

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 Defendants on Redistricting matters before the legislature by any attorney, or

the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE: Defendant does not have possession, custody, or control of any documents responsive to this Request that are not being produced in response to other Requests 1-8 and 10-13.

10. All Documents Relating to the voting districts or "VTDs" for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d)

2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

To Defendant's knowledge, at this time, Defendant is not withholding any documents based on the foregoing objections. Defendant owns and maintains a public website that provides analytics of voter turnout data on an interactive platform ("dashboard"). The website and embedded dashboard may be accessed, respectively, at <https://www.benniesmith.com> and <https://benniesmith.com/analytics/>. Documents in Defendant's possession are under review for responsiveness. It is difficult for Defendant to provide an estimated date of document production. Defendant will work diligently to identify responsive documents, and production will occur on a rolling basis.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2024, the undersigned emailed the foregoing documents to the following counsel of record:

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/s/ Miranda Jones
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Senior Assistant Attorney General
Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT THE STATE ELECTION COMMISSION'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant the State Election Commission, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to all interrogatories because the State Election Commission is not a “person” who is subject to litigation under 42 U.S.C. § 1983. *See Reese v. Indus. Comm’n of Ohio*, 3 F. App’x 340, 342 (6th Cir. 2001) (“[S]tate agencies, such as the defendants in this case, are not considered a “person” for purposes of liability under § 1983). Thus, Defendant should be dismissed as a party and should not be required to participate in discovery due to its sovereign immunity. *See United States ex rel. Cutler v. Cigna Corp.*, No. 3:21-CV-00748, 2023 WL 2552340, at *3 (M.D. Tenn. Mar. 3, 2023); *CHS/Cnty. Health Sys., Inc. v. Med. Univ. Hosp. Auth.*, No. 3:20-CV-00163, 2021 WL 5863598, at *3 (M.D. Tenn. Jan. 4, 2021); *Lunsford v. Davidson Cnty. Sheriff’s Off.*, No. 3:19-CV-00079, 2019 WL 6037003, at *3 (M.D. Tenn. Nov. 14, 2019).

4. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

5. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

6. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

7. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

8. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

9. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

10. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The Defendant’s duties are those performed by the individual Commissioners. The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant is not aware of any complaints regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary

election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implement the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map general elections for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

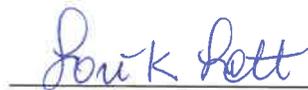
VERIFICATION

I, Jimmy Eldridge, in my official capacity as State Election Commissioner and Chair of the State Election Commission, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.


STATE ELECTION COMMISSIONER &
CHAIR OF THE STATE ELECTION
COMMISSION

STATE OF TENNESSEE)
COUNTY OF Madison)

Subscribed and sworn before me this 12th day of January, 2024.


NOTARY PUBLIC



Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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

/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT THE STATE ELECTION COMMISSION'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant the State Election Commission, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to all requests because the State Election Commission is not a “person” who is subject to litigation under 42 U.S.C. § 1983. *See Reese v. Indus. Comm’n of Ohio*, 3 F. App’x 340, 342 (6th Cir. 2001) (“[S]tate agencies, such as the defendants in this case, are not considered a “person” for purposes of liability under § 1983). Thus, Defendant should be dismissed as a party and should not be required to participate in discovery due to its sovereign immunity. *See United States ex rel. Cutler v. Cigna Corp.*, No. 3:21-CV-00748, 2023 WL 2552340, at *3 (M.D. Tenn. Mar. 3, 2023); *CHS/Cnty. Health Sys., Inc. v. Med. Univ. Hosp. Auth.*, No. 3:20-CV-00163, 2021 WL 5863598, at *3 (M.D. Tenn. Jan. 4, 2021); *Lunsford v. Davidson Cnty. Sheriff’s Off.*, No. 3:19-CV-00079, 2019 WL 6037003, at *3 (M.D. Tenn. Nov. 14, 2019).

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #1, 18, and 19, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definition of “relating to” in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

6. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

7. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* “such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all

documents that they and their counsel and other agents have actually reviewed.” This request is improper for four reasons. First, Sixth Circuit has yet to adopt the “practical ability” test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) (“Moreover, federal courts have consistently held that documents are deemed to be within the ‘possession, custody or control’ for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand.” (citations omitted)). Second, by requesting any documents that Defendant’s attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege. *See e.g., In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. *See Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); *see also New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

8. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant's possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

9. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

10. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative

bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

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 Office of the Governor, the Office of the Lieutenant Governor, the Office of the Secretary of State, the Office of the Attorney General, any Legislator, the Tennessee General Assembly, any member of the U.S. House of Representatives, any candidate to represent Tennessee General Assembly in the

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including

but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

Democratic Redistricting Committee, any political action committee, any lobbyist, any political activist or operative, any other governmental entity, any consultant, any expert, any law firm or attorney, any vendor, any group or organization, or any member of the public.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

10. All Documents Relating to the voting districts or "VTDs" for the Redistricting Plans (Tennessee Senate—HB 1037/SB 780 and U.S. Congress—HB 1034/SB 781), including the VTDs prior to the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election. As part of this Request, please produce all VTD shapefiles and/or a list of the

Census Blocks in each VTD, and please include any changes that were made to any of the VTDs prior to any of the elections above.

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT KENT YOUNCE'S
RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Kent Younce, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Set of Interrogatories.

GENERAL OBJECTIONS

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

2. Defendant objects to the Interrogatories to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official

documents privilege, the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to the definition of “relating to” in Instruction #7 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any “indirect” connection “whatsoever” to the requested topic.

4. Defendant objects to Plaintiff’s definitions and directions in Instructions #3, 28, and 29, to the extent that they include “persons or entities . . . purporting to act” on behalf of Defendant without Defendant’s approval, knowledge, or authority.

5. Defendant objects to the definitions of “old plan” and “pre-2020 redistricting plan” in Instruction #15, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the Plaintiffs’ direction regarding plurals in Instruction #20 as vague, ambiguous, and overbroad to the extent that it calls for Defendant to make presuppositions of fact regarding which words Plaintiffs intend to be treated as plural.

7. Defendant objects to Instruction #27 because it requires Defendant to provide information beyond what is required by the Federal Rules of Civil Procedure, which do not require Defendant to “state what efforts were made to obtain the requested information and the facts relied upon that support the contention that the Interrogatory cannot be answered fully and completely.” Defendant further objects to the command that, as to any interrogatory Defendant is unable to answer in whole or in part, Defendant must “state what knowledge, information, or *belief* Defendants have concerning the unanswered portion of any such Interrogatory.” (emphasis added). This instruction requires Defendant to speculate or hypothesize about unknown information.

8. Defendant objects to Instruction #33 to the extent it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation when the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

INTERROGATORY RESPONSES

Interrogatory 1:

Describe all steps You undertook or are currently undertaking to implement and prepare for elections in CD-5, CD-6, and CD-7 after the passage of the Congressional Plan and to implement and prepare for elections in SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32 after the passage of the Tennessee Senate Plan, for the (a) 2022 primary election, (b) 2022 general election, (c) 2024 primary election, and (d) 2024 general election.

Answer: Defendant objects to Interrogatory #1 as overly broad in asking for “all steps” Defendant is taking to implement and prepare for elections in the specified districts. Defendant objects to Interrogatory #1 for assuming contested facts—Defendant does not implement the election.

Subject to the foregoing objections, Defendant responds as follows:

The individual members of the State Election Commission are collectively tasked with three primary duties they must perform to prepare for elections. First, they must appoint local county commissioners to any vacancy on the county election commissions for the counties assigned to them. Second, they must approve election equipment, voting machines, and other election related devices

before they can be sold in Tennessee. Third, on rare occasions, a candidate might submit a name that is misleading, vague, incomplete, or otherwise improper. In that event, the State Election Commission must decide whether the name should remain on the ballot.

Regarding appointments, Defendant is responsible for filling local election commission vacancies in counties located in CD-5. Defendant is not responsible for filling local election commission vacancies in CD-6, CD-7, SD-29, SD-30, SC 31, or SD-32.

Defendant's duties are ongoing and he performed them before the 2022 primary and general elections and before the 2024 primary and general elections.

Interrogatory 2:

Describe generally any complaints You received from any individuals including any voters, residing in CD-5, CD-6, and/or CD-7, regarding the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Answer: Defendant does not remember receiving any complaints for the implementation of the new congressional districts, CD-5, CD-6, and/or CD-7, for the 2022 primary and general elections.

Interrogatory 3:

State the number of days it took or will take You to implement each of the following maps, starting with the date of implementation after the day the Governor signed the Tennessee Senate map and the Congressional map into law to the date that implementation ended, for the (a) 2022 primary election and (b) 2022 general election, (c) 2024 primary election, if applicable, and (d) the 2024 general election, if applicable.

Answer: Defendant objects to Interrogatory #3 to the extent it assumes a contested fact—that Defendant implements the Tennessee Senate and Congressional maps.

Subject to the foregoing objections, Defendant responds as follows:

Defendant did not implement the Tennessee Senate map or the Congressional map for the 2022 primary and general elections and will not implement the Tennessee Senate map or the Congressional map for the 2024 primary and general elections.

Interrogatory 4:

Identify all individuals who You contacted and/or contacted You in connection with the creation and the implementation, of (a) SD-31 and the other Shelby County Senate districts SD-29, SD-30, SD-32, and SD-33 and (b) CD-5, CD-6, and CD-7, including about drafts of these districts, previous versions of these districts, or alternative versions of these districts. This interrogatory response should include the nature of those contacts and each person who has personal knowledge or information on this topic.

Answer: Defendant objects to Interrogatory #4 as overly broad in asking Defendant to identify “all individuals” who contacted Defendant or whom Defendant contacted “in connection with” the implementation of the Redistricting plans for any potential reason. Defendant also objects to Interrogatory #4 to the extent it assumes a contested fact—that Defendant has contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has not contacted or been contacted by anyone in connection with the creation and implementation of SD-31, SD-29, SD-30, SD-32, SD-33, CD-5, CD-6, or CD-7.

Interrogatory 5:

If You do not have knowledge or cannot provide any answers to any one of the above Interrogatories Nos. 1–14, please identify by name any individual, including but not limited to any current or former legislator or staff member, who may have such knowledge; please specify which of these interrogatories the individuals identified may be able to answer; and please provide their contact information.

Answer: Defendant objects to Interrogatory #5 because it refers to 14 interrogatories, but Defendant has not been served with 14 interrogatories. Defendant also objects to Interrogatory #5 because it calls for speculation by asking Defendant to identify individuals who “may have such knowledge” about or “may be able to answer” these interrogatories.

Subject to the foregoing objections, Defendant responds as follows:

Defendant has answered every question submitted and is not aware of any other individuals with knowledge of the answers to these interrogatories.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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Counsel for Defendants

CERTIFICATE OF SERVICE

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

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/s/ Ryan N. Henry

Counsel for Defendants

VERIFICATION

I, Kent Younce, in my official capacity as State Election Commissioner, do hereby state and affirm that the foregoing factual responses to the above interrogatories are true to the best of my knowledge, information, and belief.

Kent D Younce
STATE ELECTION COMMISSIONER

STATE OF TENNESSEE)
COUNTY OF CAMPBELL)

Subscribed and sworn before me this 12th day of JAN, 2024.

[Signature]
NOTARY PUBLIC

EXPIRES
5-16-25



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

TENNESSEE STATE CONFERENCE OF
THE NAACP, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. 3:23-cv-00832

Judge Eric Murphy

Judge Eli Richardson

Judge Benita Pearson

**DEFENDANT KENT YOUNCE'S
RESPONSE TO PLAINTIFFS' FIRST
REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Defendant Kent Younce, in his official capacity as a State Election Commissioner, submits the following responses and objections to Plaintiffs' First Request for Production of Documents.

GENERAL OBJECTIONS

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

2. Defendant objects to the Requests to the extent they seek information that is protected from disclosure by any statute governing the confidentiality of information or by the attorney-client privilege, the deliberative-process privilege, the legislative privilege, the official documents privilege,

the common-interest or joint-prosecution privilege, the work-product doctrine, and/or any other applicable privilege. The inadvertent disclosure of such information subject to any privilege or protection is not intended to relinquish, and shall not be deemed a waiver of, any applicable privilege or protection.

3. Defendant objects to Plaintiff's definitions and directions in Instructions #1, 18, and 19, to the extent that they include "persons or entities . . . purporting to act" on behalf of Defendant without Defendant's approval, knowledge, or authority.

4. Defendant objects to the definition of "relating to" in Instruction #5 to the extent that it exceeds the scope of discoverable information by seeking disclosure of information with any indirect connection whatsoever to the requested topic.

5. Defendant objects to the definitions of "old plan" and "pre-2020 redistricting plan" in Instruction #13, which incorrectly describe the redistricting plan passed in 2012 as passing in 2011.

6. Defendant objects to the request in Instruction #17 to produce *not only* documents in their actual possession, custody, or control *but also* "such documents which Defendants have the . . . practical ability to obtain from a non-party to this action, including but not limited to any and all documents that they and their counsel and other agents have actually reviewed." This request is improper for four reasons. First, Sixth Circuit has yet to adopt the "practical ability" test. *See In re Bankers Tr. Co.*, 61 F.3d 465, 469 (6th Cir. 1995) ("Moreover, federal courts have consistently held that documents are deemed to be within the 'possession, custody or control' for purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to obtain the documents on demand." (citations omitted)). Second, by requesting any documents that Defendant's attorneys have reviewed, Plaintiffs are requesting any document that the Office of the Tennessee Attorney General may have reviewed on behalf of clients who are not parties to this litigation. Such documents do not fall within the possession, custody, or control of Defendant and are subject to attorney-client privilege.

See e.g., *In re Terrorist Attacks on Sept. 11, 2001*, 293 F.R.D. 539, 547 (S.D.N.Y. 2013). Third, the term “other agents” is vague and overly broad as it is not confined to agents of Defendant. Fourth, as indicated below, the majority of these Requests for Production seek documents that Defendant obviously would not possess but the General Assembly might possess. Defendant is not obligated to seek out and produce documents from an entirely separate branch of the State. See *Nunn v. Tennessee Dep’t of Correction*, 547 S.W.3d 163, 191-92 (Tenn. Ct. App. 2017) (noting that the Tennessee constitution separates the powers of government “into three distinct departments” (citation omitted)); see also *New York ex rel. Boardman v. Nat’l R.R. Passenger Corp.*, 233 F.R.D. 259, 266-68 (N.D.N.Y. 2006) (finding that documents in the possession of a “separate and distinct” non-party state agency were not in the possession of the party state agency and noting that a ruling to the contrary would cause “unduly burdensome and cumbersome” discovery and “precipitate absurd results”); *In re Gold King Mine Release in San Juan Cnty., Colorado on Aug. 5, 2015*, No. 1:18-MD-02824-WJ, 2020 WL 13563527, at *3-5 (D.N.M. Dec. 23, 2020) (collecting cases).

7. Defendant objects to Instruction #30 to the extent that it requires Defendant to identify responsive documents no longer in Defendant’s possession, custody, or control, that Defendant never knew existed or that Defendant does not remember.

8. Defendant objects to Instruction #31 in that it seeks to impose a requirement greater than that required by Fed. R. Civ. P. 26(e) by commanding supplementation where the Federal Rules of Civil Procedure do not. Defendant does not agree to undertake a duty to supplement responses broader than that imposed by Fed. R. Civ. P. 26(e).

9. Defendant reserves the right to supplement, clarify, revise, or correct these responses and objections as discovery progresses.

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

REQUESTS FOR PRODUCTION RESPONSES

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

a. the origination or source of any redistricting proposal related to the Redistricting Plans;

b. the impetus, rationale, background, or motivation for the Redistricting Plans, including but not limited to race, ethnicity, sex, demographic change, income, wealth, 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 to or from any Defendant, whether via e-mail, text, or some other means, Relating to any redistricting proposals or the Redistricting Plans.

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in

Defendant's objection to Instruction #17. Defendant objects to Request #1 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #1 to the extent that it seeks production of documents that are protected by legislative or attorney-client privilege. Defendant objects to Request 1(g) as vague because it does not define the term "core preservation." Defendant objects to 1(h) to the extent that it seeks premature production of expert materials; Defendant is not obligated to produce any expert reports until July 25, 2024. Dkt. 47, 4. Defendant objects to 1(h) as vague because "litigation materials" and "litigation documents" are undefined. Defendant objects to Request #1(i) as overly broad because it asks for information "relating to any effect or impact of the Redistricting proposals of any kind."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 within 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;

b. all correspondence between or among Defendants Relating to the Redistricting Plans;

c. all correspondence with third parties, including but not limited to 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;

d. all correspondence with constituents, including public commentary, imagery, or social media posts (whether still maintained on any Defendants’ social media account or since archived or deleted and including any comments made by Defendants on their own posts or other social media users’ posts);

e. 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;

f. 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;

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

h. 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;

i. 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;

j. 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 on election and redistricting matters;

k. all Documents Relating to the use of Voting Age Population (“VAP”), Citizen Voting Age Population (“CVAP”), and/or Total Population in connection with redistricting proposals, the Redistricting Plans, or the drawing of any district(s);

l. 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;

m. 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;

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #2 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #2 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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;

RESPONSE: Defendant objects to Request #3 on the grounds that it is overly broad, vague, and seeks information not relevant to this litigation. Request #3 seeks "All Documents Relating to any legislation discussed, considered or passed," without clarifying the legislative body or even the context for the contemplated discussions. It appears this Request is intended to encompass any discussion of legislation on race and the other listed topics by any number of entities or legislative bodies in any state. As such, Request #3 is neither relevant to this litigation nor proportional to the needs of the case.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

4. For January 1, 2021, until the present, the legislative agenda and legislative priorities for each Defendant.

RESPONSE: Defendant objects to Request #4 as confusing and vague. Defendant objects to Request #4 as overly broad and seeking irrelevant information. Defendant objects to Request #4 as it does not request any documents. The entire scope of Defendant's legislative agenda and legislative

priorities (if any) extends far beyond the topics relevant to this litigation. Defendant also cannot speak to the agenda and priorities of any other Defendant. Defendant understands this request for production to seek documents that Defendant possesses as part of any Tennessee agenda or priority.

Subject to that interpretation, to Defendant's knowledge, no documents are being withheld on the basis of these objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49. Defendant is not searching for documents outside of the foregoing interpretation.

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

RESPONSE: Defendant objects to Request #5 as duplicative of Requests #1 and #2. To the extent that this request seeks information not in Defendant's possession, custody, or control,

Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #5 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #5 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to this request as overly broad and burdensome in seeking "All Documents" related to redistricting "exchanged between, among, with, or within" a category of approximately 32 different entities, officials, and individuals, including "any Legislator" and "any member of the public."

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

6. All other Documents Relating to Redistricting for the Tennessee delegation to the U.S. House of Representatives, or the Tennessee Senate, from January 1, 2021, to the present, including but not limited to Redistricting criteria, public statements, correspondence, calendar invitations, scheduling emails, meeting minutes, agendas, attendance sheets, call logs, notes, presentations, studies, advocacy, letters, or other communications.

RESPONSE: Defendant objects to Request #6 as duplicative of Requests #1, #2, and #5. To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #6 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #6 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant's knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant's possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant's objection to Instruction #17. Defendant objects to Request #7 to the extent it seeks documents in the possession of, known to, or otherwise equally available to Plaintiffs. Defendant objects to Request #7 to the extent that it seeks production of documents protected by legislative or attorney-client privilege. Defendant objects to Request #7 as overly broad and seeking information disproportionate to the needs of this case by asking for "All Documents Relating to enumerations or

estimates . . . related to population changes, race, ethnicity, language[,] minority status, or United States citizenship.”

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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 Defendants on Redistricting matters before the legislature by any attorney, or the availability, solicitation, or willingness of any attorney to provide such assistance; and

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17. Defendant objects to Request #8 to the extent that it seeks production of documents protected by legislative or attorney-client privilege.

To Defendant’s knowledge, Defendant is not withholding any documents based on the foregoing objections. Defendant does not have possession, custody, or control of any responsive

documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

9. All Documents that Defendants may use to support any contention that the Redistricting Plans were enacted with a non-discriminatory purpose, including for partisan purposes, or enacted without a discriminatory purpose, to the extent that Defendants take either or both position(s).

RESPONSE:

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

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

RESPONSE: To the extent that this request seeks information not in Defendant’s possession, custody, or control, Defendant objects to this request for the reasons set out above in Defendant’s objection to Instruction #17.

Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

11. For any time period, all Documents produced to or received from other parties in the above-captioned dispute.

RESPONSE: Defendant objects to this request as vague and confusing. Defendant understands this request for production to seek documents that Defendant has received or produced as part of the discovery process in this dispute. Subject to that interpretation, Defendant has yet to receive any documents from or produce any documents to any other parties in this dispute. No documents are being withheld on the basis of these objections. Defendant is not searching for documents outside of the foregoing interpretation.

12. For any time period, all Documents responsive to, identified in, or relied upon in responding to any interrogatory served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant does not have possession, custody, or control of any responsive documents and, in the briefing in this litigation thus far, has relied on documents that are equally available to Plaintiffs and the general public. *See* Dkts. 43, 49.

13. For any time period, all Documents responsive to, identified in, or relied upon in responding to any request for admission served upon Defendants by Plaintiffs Relating to this action.

RESPONSE: Defendant has not received any requests for admission from Plaintiffs relating to this action.

Respectfully submitted,

JONATHAN SKRMETTI
Attorney General and Reporter

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CERTIFICATE OF SERVICE

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

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

/s/ Ryan N. Henry

Counsel for Defendants