

**EXHIBIT B**

**Subject:** Re: LULAC (Redistricting): Legislator Deposition Subpoenas

**Date:** Friday, May 13, 2022 at 9:59:11 AM Central Daylight Time

**From:** David Fox

**To:** Taylor Meehan, Samantha Serna

**CC:** Jack DiSorbo, Kenneth Parreno, timothy.f.mellett@usdoj.gov, daniel.freeman@usdoj.gov, smccaffity@texttrial.com, jgonzalez@malc.org, mark@markgaber.com, chad@brazilanddunn.com, noor@scsj.org, Nina Perales, allison@southerncoalition.org, Abha Khanna, Robert@notzonlaw.com, erosenberg@lawyerscommittee.org, garybledsoe@sbcglobal.net, Patrick Sweeten, nas@naslegal.com, martin.golando@gmail.com, Will Thompson, mortara@lawfairllc.com, Courtney Corbello, Ari Herbert, Ryan Kercher, frank@consovoymccarthy.com

Taylor,

Private plaintiffs oppose a motion to quash or for a protective order for the deposition subpoenas private plaintiffs have issued for Reps. Guillen, Landgraf, and Lujan. Regarding alternative means of discovery, private plaintiffs are open to reasonable proposals where possible, and it is certainly not the case that we intend to rely solely on legislative depositions. But there is no alternative that will completely eliminate the need for us to depose legislators who are responsible for enacting the challenged maps or who will run for election in the districts those maps create.

Thanks,

David

**David R. Fox**

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**From:** Taylor Meehan <taylor@consovoymccarthy.com>

**Date:** Thursday, May 12, 2022 at 7:22 PM

**To:** Samantha Serna <:sserna@MALDEF.org>

**Cc:** Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>, Kenneth Parreno <Kparreno@MALDEF.org>, timothy.f.mellett@usdoj.gov <timothy.f.mellett@usdoj.gov>, daniel.freeman@usdoj.gov <daniel.freeman@usdoj.gov>, smccaffity@texttrial.com <smccaffity@texttrial.com>, jgonzalez@malc.org <jgonzalez@malc.org>, mark@markgaber.com <mark@markgaber.com>, chad@brazilanddunn.com <chad@brazilanddunn.com>, noor@scsj.org <noor@scsj.org>, Nina Perales <nperales@MALDEF.org>, allison@southerncoalition.org <allison@southerncoalition.org>, Abha Khanna <akhanna@elias.law>, David Fox <dfox@elias.law>, Robert@notzonlaw.com <Robert@notzonlaw.com>, erosenberg@lawyerscommittee.org <erosenberg@lawyerscommittee.org>, garybledsoe@sbcglobal.net <garybledsoe@sbcglobal.net>, Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>, nas@naslegal.com <nas@naslegal.com>, martin.golando@gmail.com <martin.golando@gmail.com>, Will Thompson <Will.Thompson@oag.texas.gov>, mortara@lawfairllc.com <mortara@lawfairllc.com>, Courtney Corbello <Courtney.Corbello@oag.texas.gov>, Ari Herbert <Ari.Herbert@oag.texas.gov>, Ryan Kercher

<Ryan.Kercher@oag.texas.gov>, frank@consovoymccarthy.com <frank@consovoymccarthy.com>

**Subject:** Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Counsel:

Thank you for the discussion on today's meet-and-confer.

We will accept service for a revised deposition subpoena to clarify that, at the very least, no depositions are noticed for 5/19. By accepting service, we are not waiving any arguments about the depositions, including whether they can proceed. It is our continuing position that it is inappropriate and inefficient to proceed with depositions on 5/24 or 5/25 if there is no order from the Court at that time. Requiring a legislator to sit for a deposition while there is a pending motion to quash, which asks among other things that plaintiffs pursue alternative means of discovery before taking the extraordinary step of deposing a sitting legislator, is an effort to moot the issues before the Court. And proceeding with such a deposition without an order wastes resources, contrary to a party's obligation under Rule 45 to avoid undue burden or expense for third-party discovery. We do hope you'll reconsider and that we can work together to find an agreed-upon time and place, if necessary, for any future depositions after we have a ruling.

Relatedly, counsel for DOJ and the private plaintiffs have stated that their timing concerns are due to the separate trial in the separate SB1 litigation, beginning in early July and required trial preparation before then. Without conceding that timing issues arising from separate litigation can be deployed to burden the third-party legislators here, if the parties could reach an agreement to extend your requested legislator discovery into August, would you be willing to postpone the legislator depositions at this time, pursue alternative means of discovery in the interim, and re-raise the legislator discovery issues later?

And if not, can private plaintiffs confirm that they oppose a motion to quash, or in the alternative a motion for protective order, for the deposition subpoenas they have issued for Reps. Guillen, Landgraf, and Lujan? Based on last evening's brief and today's call, we understand the private plaintiffs' position is that they may ask the legislators about what motivated them during the redistricting process, and that they plan to use the depositions to pose such questions. We further understand that plaintiffs might ask legislators about the *Gingles* standard and other unenumerated topics. When asked whether plaintiffs were open to alternative means of discovery—for example a 30(b)(6) deposition regarding the public record, deposing other non-legislators in the challenged districts, or expert discovery that always looms large in redistricting cases, or any other less invasive means of discovery than having a legislator sit for hours of deposition—plaintiffs stated they were not open to those alternatives. If that is correct, and we cannot reach any agreement to at least postpone, then we'd like to get something on file quickly so the Court can consider those issues along with the pending motion regarding the United States' subpoenas.

Warm regards,

Taylor

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**From:** Taylor Meehan <taylor@consovoymccarthy.com>

**Date:** Wednesday, May 11, 2022 at 8:48 AM

**To:** Nina Perales <nperales@MALDEF.org>, Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>

**Cc:** Samantha Serna <sserna@MALDEF.org>, Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>, Kenneth Parreno <kparreno@MALDEF.org>, "timothy.f.mellet@usdoj.gov" <timothy.f.mellet@usdoj.gov>, "daniel.freeman@usdoj.gov" <daniel.freeman@usdoj.gov>, "smccaffity@texttrial.com" <smccaffity@texttrial.com>, "jgonzalez@malc.org" <jgonzalez@malc.org>, "mark@markgaber.com"

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**Subject:** Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Nina,

Thursday this week would be great. Could we do 9:30 AM CST or sometime between 1:30 and 4:30 PM CST?

Congratulations on the graduation!

Best,  
Taylor

Taylor Meehan  
**Consovoy McCarthy PLLC**  
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**From:** Nina Perales <nperales@MALDEF.org>

**Date:** Tuesday, May 10, 2022 at 9:50 PM

**To:** Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>

**Cc:** Samantha Serna <sserna@MALDEF.org>, Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>, Kenneth Parreno <kparreno@MALDEF.org>, "timothy.f.mellet@usdoj.gov" <timothy.f.mellet@usdoj.gov>, "daniel.freeman@usdoj.gov" <daniel.freeman@usdoj.gov>, "smccaffity@texttrial.com" <smccaffity@texttrial.com>, "jgonzalez@malc.org" <jgonzalez@malc.org>, "mark@markgaber.com" <mark@markgaber.com>, "chad@brazilanddunn.com" <chad@brazilanddunn.com>, "noor@scsj.org" <noor@scsj.org>, "allison@southerncoalition.org" <allison@southerncoalition.org>, "akhanna@elias.law" <akhanna@elias.law>, "dfox@elias.law" <dfox@elias.law>, "Robert@notzonlaw.com" <Robert@notzonlaw.com>, "erosenberg@lawyerscommittee.org" <erosenberg@lawyerscommittee.org>, "garybledsoe@sbcglobal.net" <garybledsoe@sbcglobal.net>, "nas@naslegal.com" <nas@naslegal.com>, "martin.golando@gmail.com" <martin.golando@gmail.com>, Will Thompson <Will.Thompson@oag.texas.gov>, Taylor Meehan <taylor@consovoymccarthy.com>, "mortara@lawfairllc.com" <mortara@lawfairllc.com>, Courtney Corbello <Courtney.Corbello@oag.texas.gov>, Ari Herbert <Ari.Herbert@oag.texas.gov>, Ryan Kercher <Ryan.Kercher@oag.texas.gov>

**Subject:** Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Patrick, et al.,

Thank you for your email. Do you have any availability on Thursday of this week for both meetings? I am out of the office next Monday-Wednesday for my son's college graduation in NY.

Nina Perales  
Vice President of Litigation  
Mexican American Legal Defense  
and Educational Fund, Inc. (MALDEF)  
110 Broadway Suite 300  
San Antonio TX 78201  
ph (210) 845-5147

On May 10, 2022, at 9:17 PM, Patrick Sweeten <Patrick.Sweeten@oag.texas.gov> wrote:

Samantha,

I am afraid the State Defendants are not going to be able to make the Friday meet and confer work. As you know Judge Rodriguez set a hearing at 3:30 on that date.

Can we reschedule this meet and confer to coincide with the meet and confer you wanted to conduct related to the "State Defendants' privilege log regarding LULAC Plaintiffs' and Texas NAACP's First Set of Requests for Production of Documents (privilege log served May 4, 2022)" ?

We should be available either Monday, May 16<sup>th</sup> or Tuesday, May 17<sup>th</sup>. Please suggest times that would work on those dates. Also, we can use this number for the call in: 512-575-4304.

Thank you.

Patrick

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**From:** Samantha Serna <sserna@MALDEF.org>

**Sent:** Tuesday, May 10, 2022 5:20 PM

**To:** Nina Perales <nperales@MALDEF.org>; Jack DiSorbo <Jack.DiSorbo@oag.texas.gov>; Kenneth Parreno <Kparreno@MALDEF.org>; Timothy.F.Mellett@usdoj.gov; Daniel.Freeman@usdoj.gov; SMcCaffity@texttrial.com; jgonzalez@malc.org; mark@markgaber.com; chad@brazilanddunn.com; noor@scsj.org; allison@southerncoalition.org; akhanna@elias.law; dfox@elias.law; robert@notzonlaw.com; erosenberg@lawyerscommittee.org; garybledsoe@sbcglobal.net; nas@naslegal.com; martin.golando@gmail.com

**Cc:** Patrick Sweeten <Patrick.Sweeten@oag.texas.gov>; Will Thompson <Will.Thompson@oag.texas.gov>; Taylor Meehan <taylor@consovoymccarthy.com>; mortara@lawfairllc.com; Courtney Corbello <Courtney.Corbello@oag.texas.gov>; Ari Herbert <Ari.Herbert@oag.texas.gov>; Ryan Kercher <Ryan.Kercher@oag.texas.gov>

**Subject:** Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Hello Jack, Adam and Taylor,

12:30pm CST on this Friday works best for the majority of the Plaintiffs for a meet and

confer.

Please circulate a zoom link at your convenience.

Thank you,  
S

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**Samantha Serna Uribe** | Staff Attorney

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**From:** Nina Perales <[nperales@MALDEF.org](mailto:nperales@MALDEF.org)>  
**Date:** Monday, May 9, 2022 at 12:55 PM  
**To:** Jack DiSorbo <[Jack.DiSorbo@oag.texas.gov](mailto:Jack.DiSorbo@oag.texas.gov)>, Fatima Menendez <[fmenendez@MALDEF.org](mailto:fmenendez@MALDEF.org)>, Samantha Serna <[sserna@MALDEF.org](mailto:sserna@MALDEF.org)>, Kenneth Parreno <[kparreno@MALDEF.org](mailto:kparreno@MALDEF.org)>, "Timothy.F.Mellett@usdoj.gov" <[Timothy.F.Mellett@usdoj.gov](mailto:Timothy.F.Mellett@usdoj.gov)>, "Daniel.Freeman@usdoj.gov" <[Daniel.Freeman@usdoj.gov](mailto:Daniel.Freeman@usdoj.gov)>, "SMcCaffity@texttrial.com" <[SMcCaffity@texttrial.com](mailto:SMcCaffity@texttrial.com)>, "jgonzalez@malc.org" <[jgonzalez@malc.org](mailto:jgonzalez@malc.org)>, "mark@markgaber.com" <[mark@markgaber.com](mailto:mark@markgaber.com)>, "chad@brazilanddunn.com" <[chad@brazilanddunn.com](mailto:chad@brazilanddunn.com)>, "noor@scsj.org" <[noor@scsj.org](mailto:noor@scsj.org)>, "allison@southerncoalition.org" <[allison@southerncoalition.org](mailto:allison@southerncoalition.org)>, "akhanna@elias.law" <[akhanna@elias.law](mailto:akhanna@elias.law)>, "dfox@elias.law" <[dfox@elias.law](mailto:dfox@elias.law)>, "robert@notzonlaw.com" <[robert@notzonlaw.com](mailto:robert@notzonlaw.com)>, "erosenberg@lawyerscommittee.org" <[erosenberg@lawyerscommittee.org](mailto:erosenberg@lawyerscommittee.org)>, "garybledsoe@sbcglobal.net" <[garybledsoe@sbcglobal.net](mailto:garybledsoe@sbcglobal.net)>, "nas@naslegal.com" <[nas@naslegal.com](mailto:nas@naslegal.com)>, "martin.golando@gmail.com" <[martin.golando@gmail.com](mailto:martin.golando@gmail.com)>  
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**Subject:** Re: LULAC (Redistricting): Legislator Deposition Subpoenas

Thank you Jack. And it's my pleasure to include Adam and Taylor on these emails. We will find times that work for Plaintiffs on Friday and respond to set a time for the call.

Take care,

Nina Perales  
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**From:** Jack DiSorbo <[Jack.DiSorbo@oag.texas.gov](mailto:Jack.DiSorbo@oag.texas.gov)>  
**Sent:** Monday, May 9, 2022 12:31 PM  
**To:** Nina Perales; Fatima Menendez; Samantha Serna; Kenneth Parreno;  
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Corbello; Ari Herbert; Ryan Kercher  
**Subject:** RE: LULAC (Redistricting): Legislator Deposition Subpoenas

Nina,

Thank you for your email. To give an update, together with OAG, and as indicated in the motion to quash the United States' deposition subpoenas, Taylor Meehan and Adam Mortara (copied here) also represent Representatives Guillen, Lujan, and Landgraf in connection with the subpoenas issued in these redistricting cases. I would ask that you please copy them on future related communications.

As discussed in the pending motion to quash, the Representatives have and will continue to assert legislative privilege and any other applicable privileges and immunities. We do not see any basis for deposing sitting legislators here, whether based on the allegations in the LULAC plaintiffs' amended complaint, any of the other private plaintiffs' amended complaints, or the United States' complaint.

The private plaintiffs each allege that legislators acted with discriminatory intent; but these are largely legal conclusions and do not articulate concrete facts so as to warrant questioning in a deposition. Even if such allegations were sufficiently pled, it is not a basis for deposing legislators. During the preliminary injunction hearing, the Court already ruled that questions of a testifying legislator would be limited to that "within the public record" unless the legislator chose to waive her legislative privilege. That ruling is consistent with binding Supreme Court precedent, as well as the approach of various circuit courts. In light of that ruling, we cannot see the basis for deposing sitting legislators here, whether about their legislative intent or anything else. If, for one example, it is your intent to ask about that "within the public

record,” consistent with the Court’s ruling, then our hope is that we can work together to find alternatives to deposing sitting legislators for such material.

We would appreciate the opportunity to meet and confer on these subpoenas so we can better understand what relevant, non-privileged information plaintiffs believe could warrant depositions of legislators here. This week is rather busy for us (as I imagine it is for you as well, given the close of the discovery period in the SB1 litigation). We do, however, have some availability on this Friday, and would propose a time between 9:00 am and 2:00 pm.

Sincerely, Jack DiSorbo

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Jack DiSorbo  
Assistant Attorney General, Special Litigation Unit  
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**From:** Nina Perales <[nperales@MALDEF.org](mailto:nperales@MALDEF.org)>  
**Sent:** Friday, May 6, 2022 10:31 PM  
**To:** [Timothy.F.Mellett@usdoj.gov](mailto:Timothy.F.Mellett@usdoj.gov); [Daniel.Freeman@usdoj.gov](mailto:Daniel.Freeman@usdoj.gov); [SMcCaffity@texttrial.com](mailto:SMcCaffity@texttrial.com); [jgonzalez@malc.org](mailto:jgonzalez@malc.org); [mark@markgaber.com](mailto:mark@markgaber.com); [chad@brazilanddunn.com](mailto:chad@brazilanddunn.com); [noon@scsj.org](mailto:noon@scsj.org); [allison@southerncoalition.org](mailto:allison@southerncoalition.org); [akhanna@elias.law](mailto:akhanna@elias.law); [dfox@elias.law](mailto:dfox@elias.law); [robert@notzonlaw.com](mailto:robert@notzonlaw.com); [erosenberg@lawyerscommittee.org](mailto:erosenberg@lawyerscommittee.org); [garybledsoe@sbcglobal.net](mailto:garybledsoe@sbcglobal.net); [nas@naslegal.com](mailto:nas@naslegal.com); [martin.golando@gmail.com](mailto:martin.golando@gmail.com); Samantha Serna <[sserna@MALDEF.org](mailto:sserna@MALDEF.org)>; Patrick Sweeten <[Patrick.Sweeten@oag.texas.gov](mailto:Patrick.Sweeten@oag.texas.gov)>; Eric Hudson <[Eric.Hudson@oag.texas.gov](mailto:Eric.Hudson@oag.texas.gov)>; Will Thompson <[Will.Thompson@oag.texas.gov](mailto:Will.Thompson@oag.texas.gov)>; Jack DiSorbo <[Jack.DiSorbo@oag.texas.gov](mailto:Jack.DiSorbo@oag.texas.gov)>  
**Cc:** Samantha Serna <[sserna@MALDEF.org](mailto:sserna@MALDEF.org)>; Kenneth Parreno <[kparreno@MALDEF.org](mailto:kparreno@MALDEF.org)>  
**Subject:** LULAC (Redistricting): Legislator Deposition Subpoenas

Counsel,

Please see attached Private Plaintiffs' deposition subpoenas for State Representatives Guillen, Lujan and Landgraf. These subpoenas note the same dates, times and locations as those in the DOJ subpoenas.

Thank you,

Nina Perales  
Vice President of Litigation  
Mexican American Legal Defense

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