

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Florida Secretary of State, et al.,

Defendants.

Case No. 2022-ca-000666

PLAINTIFFS' OPPOSITION TO THE NON-PARTIES' MOTION FOR REHEARING

Once again, the Executive Office of the Governor and J. Alex Kelly (collectively, the “non-parties”) seek to obstruct Plaintiffs’ right to discover evidence related to the development and passage of Florida’s 2022 congressional plan. They do so through a motion for rehearing of the Court’s December 15, 2022 Order requiring the non-parties to produce documents created by Mr. Adam Foltz, a consultant hired by the Secretary of State, related to his work redrawing Florida’s congressional map (the “Foltz documents”).

The basis for the non-parties’ motion appears in a single unsupported sentence: “The non-parties contend that” maps created by Mr. Foltz but not publicly shared “should be protected by the work-product doctrine and shouldn’t be released to Plaintiffs.” Mot. at 3. Courts have routinely rejected this type of baseless attempt to shield the legislative process from public view. This Court should do the same.

The work product doctrine only applies to materials created in anticipation of litigation. Mr. Foltz was hired by the Secretary of State not to assist with litigation but to assist with the state’s ordinary obligation to redraw its congressional districts. Try as they might, the non-parties

cannot recast Mr. Foltz in a role he did not play to reap the benefits of a privilege that does not apply. Plaintiffs thus respectfully request that the Court deny the non-parties' motion for rehearing.

BACKGROUND

On July 26, 2022, Plaintiffs served the non-parties with a notice of intent to serve a subpoena duces tecum without deposition. As relevant here, Plaintiffs sought “[a]ll documents and communications relating to the drawing, consideration, or adoption of congressional districts for the 2020 congressional redistricting cycle, including but not limited to communications . . . with or relating to Adam Foltz” and “[a]ll documents and communications, including, without limitation, requests for proposals, proposals, contracts, and timesheets or invoices, relating to consultants . . . including . . . Adam Foltz.” **Exhibit A** at 13. The non-parties served objections to the subpoena on August 5, 2022 and moved to quash it a month later. Although their objections cited the work product privilege, the non-parties did not invoke the privilege in their motion. The non-parties nevertheless raised the privilege during a hearing on their motion, on which the Court deferred resolution until it could complete an *in camera* review of the documents.

After reviewing the materials, the Court determined that the privilege did not apply to a host of Foltz documents, including “the numerous native datafiles provided by Mr. Adam Foltz.” Order at 4. The Court’s reasoning turned on the principle that the work product privilege does not apply to “materials in the files of lawyers employed by lawyers of the State of Florida because the Public Record Act applies to these records.” Order at 4 (quoting Charles W. Ehrhardt, Florida Evidence § 502.9, at 515-16 (2021 ed.)). Rather, the work product doctrine only protects documents “assembled in anticipation of litigation” that “reflect a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency.” *Id.* Because the Foltz files were

created in the course of official state business rather than in anticipation of litigation, the Court concluded that his files were not protected by the work product privilege and could be made public.

ARGUMENT

I. The Court correctly concluded that the work product privilege does not apply to the Foltz documents.

As the Court correctly concluded, the work product privilege does not apply to the Foltz documents. The work product doctrine only applies to “[m]aterials prepared in anticipation of litigation.” *FedEx v. Cantway*, 778 So. 2d 1052, 1053 (Fla. 4th DCA 2001) (citing Fla. R. Civ. P. 1.280(b)(3)). By contrast, “[d]ocuments and tangible things prepared in the ordinary course of business, pursuant to public requirements unrelated to litigation . . . are not entitled to protection from discovery under the work product doctrine.” *Procter & Gamble Co. v. Swilley*, 462 So. 2d 1188, 1193 (Fla. 1st DCA 1985) (citing *Cotton States Mut. Ins. Co. v. Turtle Reef Assoc., Inc.*, 444 So. 2d 595 (Fla. 4th DCA 1984)).¹

The Foltz documents fall decidedly within the second category. Mr. Foltz was hired not as a litigation expert but as a consulting map drawer to assist the state with its “public requirement[]” to redraw its congressional plan. In a speech given to the Legislature, J. Alex Kelly, the Governor’s deputy chief of staff and the person responsible for drawing 18 of the 28 districts in the 2022 Congressional Plan, announced that Mr. Foltz was “brought on board” as a “contract map drawer,”

¹ As the Court correctly explained in its Order, Florida’s public records law contains a similar framework. While Florida “has enacted a limited exemption from the Public Records Act in section 119.071(1)(d)(1) of the Florida Statutes for records of an agency attorney,” those records “must be . . . prepared in anticipation of” litigation. Charles W. Ehrhardt, *Florida Evidence* § 502.9 (2021 ed.); *see also* Fla. Stat. 119.071(1)(d)(1) (“A public record that was prepared by an agency attorney . . . or prepared at the attorney’s express direction . . . and that was prepared exclusively for” or “in anticipation of imminent civil or criminal litigation . . . is exempt” from disclosure “until the conclusion of the litigation.”). Accordingly, for the same reasons the Foltz documents are not protected by the work product privilege, they are not protected by Florida’s public records exception.

and that he drew proposed plans for the state, including several of the Governor's proposed maps. **Exhibit B** at 10-11. Mr. Kelly presented Mr. Foltz as an expert map drawer who had experience working "for state legislatures in Wisconsin and Texas" and who was presently also "drawing maps for the state of Texas." *Id.* In short, as the non-parties themselves made clear, Mr. Foltz was a consultant hired to assist the Legislature in its ordinary obligation to redistrict the state.

It is no matter that the Legislature may have expected litigation to follow its enactment of a congressional map. The "mere likelihood of litigation" cannot trigger the privilege. *Cotton States Mut. Ins. Co.*, 444 So. 2d at 596; *see also Procter & Gamble Co.*, 462 So. 2d at 1193 (same). The reason is simple: "The Legislature could *always* have a reasonable belief that *any* of its enactments would result in litigation. That is the nature of the legislative process: it often involves contentious issues that the public may challenge as being unconstitutional." *Baldus v. Brennan*, Nos. 11-cv-562-JPS-DPW-RMD, 11-cv-1011-JPS-DPW-RMD, 2011 WL 6385645, at *2 (E.D. Wis. Dec. 20, 2011) (emphases in the original); *see also Bethune-Hill v. Va. State Bd. of Elections*, 114 F. Supp. 3d 323, 348 (E.D. Va. 2015) (three-judge court) (noting that "[l]egislative counsel" may not "withhold documents pertaining to pending legislation" under work product doctrine). Indeed, the *Baldus* court skewered an argument nearly identical to the one raised here as "a slap in the face to Wisconsin's citizens" for, if adopted, "the Court would be saying that the Legislature could shield all of its actions from any discovery." 2011 WL 6385645 at *2.²

Courts across the country have held that the work product privilege does not protect documents related to the creation of draft redistricting maps. *See, e.g., League of United Latin Am.*

² Mr. Foltz was involved as a map drawing consultant in the *Baldus* case as well. In a later order, the court ordered him to appear for a deposition and produce documents consistent with the court's prior orders denying blanket assertions of legislative and attorney-client privilege over the legislature's redistricting work. *See Baldus v. Members of Wis. Gov't Accountability Bd.*, 843 F. Supp. 2d 955, 961 (E.D. Wis. 2012).

Citizens v. Abbott, No. 3:21-CV-00299-DCG-JES-JVB, 2022 WL 2921793, at *11-12 (W.D. Tex. July 25, 2022) (“*LULAC*”) (rejecting work product privilege over “documents created during legislative proceedings, such as draft redistricting legislation and hearing notes” because those documents “were created” in the “ordinary course of business”);³ *Ohio A. Philip Randolph Inst. v. Smith*, No. 1:18cv357, 2018 WL 6591622, at *5 (S.D. Ohio Dec. 15, 2018) (declining to apply work product privilege to “data and maps” prepared pursuant to a “statutory duty to draft Ohio’s congressional map”); *Texas v. United States*, 279 F.R.D. 24, 33-35 (D.D.C. 2012) (three-judge court), *vacated in part on other grounds*, 279 F.R.D. 176 (D.D.C. 2012) (three-judge court) (rejecting claim that pending redistricting lawsuit transformed redistricting documents into protected work product); *D.G. ex rel. G. v. Henry*, No. 08-cv-74-GKF-FHM, 2010 WL 1257583, at *2 (N.D. Okla. Mar. 24, 2010) (declining to apply work product privilege to documents created to “aide the legislative process,” even if “counsel may have [had] litigation in mind while drafting [them]”).

Nor of course does it matter that Mr. Foltz created the documents at counsel’s direction, as the non-parties claim. Mot. at 3. The relevant inquiry is not whether counsel directed the creation of the maps but whether those maps were created in anticipation of litigation. *See, e.g., Procter & Gamble Co.*, 462 So. 2d at 1193; *LULAC*, 2022 WL 2921793, at *11-12 (finding irrelevant that counsel may have been involved in the creation of the materials because “the focus is on whether

³ Mr. Foltz’s redistricting work was also implicated in *LULAC*, where the court specifically rejected an assertion that “House and congressional redistricting proposals” created by Mr. Foltz during his work assisting with the state’s redistricting should be given blanket protection under the attorney-client privilege. *LULAC*, 2022 WL 2921793, at *6-7. The district court’s order has been stayed pending appeal.

specific materials were prepared” in anticipation of litigation). Here, the answer is emphatically no.⁴

In sum, precedent and practice speak as one: the Foltz documents were created pursuant to the Legislature’s ordinary public requirement to redistrict the state and are therefore not protected by the work product privilege. Accordingly, the non-parties have offered the Court no reason to revisit its Order.

II. Even if the work product privilege applied, extraordinary circumstances justify piercing the privilege.

Even if the work product privilege did apply, Plaintiffs are still entitled to the Foltz documents. The work product privilege may be pierced where a plaintiff “has need of the materials,” Fla. R. Civ. P. 1.280(b)(3), and “it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means,” *Nevin v. Palm Beach Cnty., Sch. Bd.*, 958 So. 2d 1003, 1006 (Fla. 1st DCA 2007).

As the U.S. Supreme Court has explained, “legislative or administrative history,” such as draft redistricting plans and the data used in drafting those plans, bear directly on whether “invidious discriminatory purpose was a motivating factor” behind a legislative enactment. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). Indeed, last cycle, the Florida Supreme Court relied on legislative history—in that case, draft maps and third-party

⁴ The non-parties’ motion emphasizes the portion of Professor Ehrhardt’s treatise on Florida evidentiary rules regarding documents prepared at an attorney’s “express direction,” *see* Mot. at 2, but makes no mention of—and appears to read out of the Court’s Order—the “in anticipation of litigation” requirement. Plaintiffs understand the Court’s ruling on the work product privilege to be consistent with the Ehrhardt Treatise and Florida’s Public Records Act in protecting *only* documents created in anticipation of litigation, and then too only those litigation documents that reflect “a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency.” Order at 4 (quoting Charles W. Ehrhardt, Florida Evidence § 502.9, at 515-16 (2021 ed.)); *see also id.* (“Public records assembled in anticipation of litigation that do not contain the opinions, mental impressions or legal conclusions of the attorney are not protected . . .”).

communications with the Legislature—in concluding that unconstitutional intent tainted the state’s congressional map. *See generally League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015).

The Foltz documents, including draft maps reflecting the map drawers’ motivations, are essential to Plaintiffs’ understanding of the legislative history behind the 2022 congressional plan. **Exhibit C**, Affidavit of Abha Khanna at 1-3. Barring Plaintiffs from this information will hamstring their ability to assess the motivations behind the 2022 congressional plan. *Id.* at 2-3. Nor can Plaintiffs obtain the information they seek through other means. No other source of information could similarly illuminate the map drawing process, and there is no other party from whom Plaintiffs could seek this information.⁵ *Id.*; *see also Paradise Pines Health Care Assocs., LLC v. Bruce*, 27 So. 3d 83, 84 (Fla. 1st DCA 2009) (finding extraordinary circumstances exist where “it would be difficult, if not impossible,” for a party to obtain the information by other means). Extraordinary circumstances therefore exist here to pierce the work product privilege even if it applied.

CONCLUSION

The non-parties have offered the Court no basis to reconsider its Order. Plaintiffs therefore respectfully request that the Court deny the non-parties’ motion for rehearing.

⁵ While Plaintiffs have issued a notice of intent to serve a subpoena *duces tecum* without deposition on Mr. Foltz himself, the Secretary has already objected to the notice by claiming the documents Plaintiffs seek are protected by the work product privilege. And Mr. Foltz himself may yet assert his own objections to the subpoena once it is issued.

Dated: January 9, 2023

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 2023 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

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Counsel for the Florida House of Representatives

Exhibit A

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., EQUAL
GROUND EDUCATION FUND, INC.,
LEAGUE OF WOMEN VOTERS OF
FLORIDA, INC., LEAGUE OF WOMEN
VOTERS OF FLORIDA EDUCATION
FUND, INC., FLORIDA RISING
TOGETHER, PASTOR REGINALD
GUNDY, SYLVIA YOUNG, PHYLLIS
WILEY, ANDREA HERSHORIN,
ANAYDIA CONNOLLY, BRANDON P.
NELSON, KATIE YARROWS, CYNTHIA
LIPPERT, KISHA LINEBAUGH, BEATRIZ
ALONSO, GONZALO ALFREDO
PEDROSO, and ILEANA CABAN,

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Florida Secretary of State, ASHLEY MOODY,
in her official capacity as Florida Attorney
General, the FLORIDA SENATE, and the
FLORIDA HOUSE OF
REPRESENTATIVES,

Defendants.

Case No. 2022-ca-000666

PLAINTIFFS' NOTICE OF INTENT TO SERVE SUBPOENA DUCES TECUM
WITHOUT DEPOSITION ON NON-PARTIES

YOU ARE HEREBY notified that after ten (10) days from the date of service of this notice, if no objections are served by any party, undersigned counsel for Plaintiffs Black Voters Matter Capacity Building Institute, Inc., Equal Ground Education Fund, Inc., League of Women Voters of Florida, Inc., League of Women Voters of Florida Education Fund, Inc., Florida Rising Together, Pastor Reginald Gundy, Sylvia Young, Phyllis Wiley, Andrea Hershorin, Anaydia

Connolly, Brandon Nelson, Katie Yarrows, Cynthia Lippert, Kisha Linebaugh, Beatriz Alonso, Gonzalo Alfredo Pedroso, and Ileana Caban, will issue the attached Subpoena Duces Tecum Without Deposition pursuant to Florida Rule of Civil Procedure 1.351 upon the **Executive Office of Governor Ron DeSantis** and **Governor Ron DeSantis**. The materials received pursuant to the attached Subpoena will be used for discovery, at trial, and for such other purposes as are permitted under the applicable Florida Statutes and Florida Rules of Civil Procedure.

Dated: July 26, 2022

/s/ Frederick S. Wermuth

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 26, 2022 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

/s/ Frederick S. Wermuth

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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
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BLACK VOTERS MATTER CAPACITY
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LIPPERT, KISHA LINEBAUGH, BEATRIZ
ALONSO, GONZALO ALFREDO
PEDROSO, and ILEANA CABAN,

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Florida Secretary of State, ASHLEY MOODY,
in her official capacity as Florida Attorney
General, the FLORIDA SENATE, and the
FLORIDA HOUSE OF
REPRESENTATIVES,

Defendants.

Case No. 2022-ca-000666

**SUBPOENA DUCES TECUM FOR PRODUCTION OF DOCUMENTS WITHOUT
DEPOSITION PURSUANT TO FLA. R. CIV. P. 1.351**

THE STATE OF FLORIDA:

To: Governor Ron DeSantis, personally and in his official capacity
Executive Office of Governor Ron DeSantis
400 S Monroe St., Suite 209, Tallahassee, FL 32399

YOU ARE COMMANDED to appear at the offices of Phipps Reporting, 2894 Remington Green Lane, Suite A, Tallahassee, FL 32308 on **August 19, 2022 at 10:00 a.m.** and have with you at that time and place the following:

SEE ATTACHED SCHEDULE A

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of these items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition the preparation of the copies upon the payment in advance of the reasonable cost of preparation. ****IF THE COST OF PRODUCING THE REQUESTED DOCUMENTS WILL EXCEED \$100.00, PLEASE CONTACT THOMAS A. ZEHNDER, 25 EAST PINE STREET, ORLANDO, FL 32801, TELEPHONE: (407) 422-2472, FOR FURTHER INSTRUCTIONS BEFORE INCURRING THE COST OF PRODUCING THE REQUESTED DOCUMENTS.**

You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena. **THIS WILL NOT BE A DEPOSITION. NO TESTIMONY WILL BE GIVEN.**

If you fail to:

- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or
- (3) object to this subpoena.

you may be in contempt of court. You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you shall respond to this subpoena as directed.

Dated: _____

By: /s/ Frederick S. Wermuth
Frederick S. Wermuth
FOR THE COURT

Subpoena issued by:
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Counsel for Plaintiffs

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATIONS IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE ADA COORDINATOR, HUMAN RESOURCES, ORANGE COUNTY COURTHOUSE, 425 N. ORANGE AVE., SUITE 510, ORLANDO, FLORIDA (407) 836-2303, AT LEAST 7 DAYS BEFORE YOUR SCHEDULED COURT APPEARANCE, OR IMMEDIATELY UPON RECEIVING THIS COURT NOTIFICATION. IF THE TIME BEFORE THE SCHEDULED APPEARANCE IS LESS THAN 7 DAYS, OR IF YOU ARE HEARING OR VOICE IMPAIRED, CALL 711.

SCHEDULE A

DEFINITIONS AND INSTRUCTIONS

- A. Notwithstanding any definition set forth below, each word, term, or phrase used in these requests is intended to have the broadest meaning permitted under the Florida Rules of Civil Procedure.
- B. Words or terms not specifically defined herein have the meaning commonly understood, and no definition is intended as exclusive.
- C. The following terms shall have the meanings indicated below:
 - (1) The terms “you,” and “your” shall mean Governor Ron DeSantis, in his capacity as an individual and as Governor of Florida, and covers the Executive Office of Governor Ron DeSantis as well as present and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, representatives, attorneys, and other persons or entities acting or purporting to act on behalf of Governor Ron DeSantis or the Executive Office of Governor Ron DeSantis.
 - (2) The term “Legislature” shall mean the Florida Legislature, including but not limited to the Florida House of Representatives, the Florida Senate, the Florida Senate Committee on Reapportionment, the Florida Senate Select Subcommittee on Congressional Reapportionment, the Florida Senate Select Subcommittee on Legislative Reapportionment, the Florida House Congressional Redistricting Committee, the Florida House Congressional Redistricting Subcommittee, the Florida House State Legislative Redistricting Subcommittee, and their respective members and staff.
 - (3) The term “Fair Districts Amendments” shall mean Article III, Sections 20 and 21 of the Florida Constitution.
 - (4) The term “Enacted Plan” shall mean the congressional district plan passed by the Legislature on April 21, 2022, or any drafts or precursors thereof.
 - (5) The term “Plan P000C0079” shall mean the congressional district plan submitted to the Legislature on January 16, 2022 by Ryan Newman, Counsel to the Governor, or any drafts or precursors thereof.
 - (6) The term “Plan P000C0094” shall mean the congressional district plan submitted to the Legislature on February 14, 2022 by Ryan Newman, Counsel to the Governor, or any drafts or precursors thereof.
 - (7) The term “Plan H000C8019” shall mean the congressional district plan approved by the Legislature on March 4, 2022, or any drafts or precursors thereof.

- (8) The term “Plan H000C8015” shall mean the congressional district plan approved by the Legislature on March 4, 2022, with the recommendation that the plan take effect if the Plan H000C8019 was found unconstitutional.
- (9) The term “Proposed Plans” shall mean all congressional redistricting plans drawn, considered, reviewed, proposed, or adopted by you or the Legislature during 2022, as well as any drafts or precursors of those plans or subsequent amendments thereof.
- (10) The term “map drawer” shall mean anyone who assisted, advised, or provided input or feedback in the creation of any Proposed Plan, regardless of whether or not they were compensated for their services or participated in an official or unofficial capacity.
- (11) The term “mapping software” means any and all digital programs that may be used to assist in drawing congressional districts.
- (12) The term “person” shall mean and include natural persons, governmental entities, proprietorships, corporations, partnerships, joint ventures, and each other form of organization, entity or association.
- (13) The term “document” is used in the broadest possible sense and shall mean, without limitation, any tangible thing on or in which data are preserved by any means or in any form, including, without limiting the generality of its meaning, electronically stored information (ESI) or recorded material of any kind such as email or other electronic correspondence, including any electronic or computerized record from which information can be obtained or translated, correspondence, letters, envelopes, telegrams, facsimiles, telexes, text messages, minutes, notes or memoranda of personal or telephone conversations or conferences, telephone logs, memoranda, handwritten or stenographic notes, diaries, calendars, contracts, purchase orders, invoices, accounts, ledgers, evaluations, analyses, forecasts, statistics, estimates, reviews, working papers, reports, studies, books, magazines, newspapers, booklets, brochures, catalogs, pamphlets, instructions, circulars, bulletins, trade letters, press releases, charts, maps, geological or geophysical logs, diagrams, designs, specifications, blueprints, sketches, drawings, pictures, photographs, motion pictures, negatives, undeveloped film, video or audio tapes, belts or discs, voice recordings, transcripts or transcriptions, computer printouts, magnetically encoded cards or tapes, punched cards or tapes, microfilms, microfiches, and any other data compilations from which words, numbers, images or other information can be obtained (translated, if necessary, through appropriate devices into reasonably useable form), whether or not privileged, that is in your possession, custody or control, and shall include all originals, drafts and non-identical copies of such documents, whether sent or received or neither.
- (14) The term “communication” shall mean the transmission of any verbal or nonverbal, written or non-written message, information, sign, symbol, or behavior, and shall include the process by which such transmission occurs.

- (15) The terms “relating to” and “concerning” shall mean referring to, related to, regarding, consisting of, pertaining to, reflecting, evidencing, describing, constituting, or being in any way logically or factually connected with the matter discussed, including any connection, direct or indirect, whatsoever with the requested topic, without limitation, unless otherwise specified in the Request.
- D. Notwithstanding any of the provisions below, Respondents should not produce any documents or communications that are currently publicly available on the Legislature’s or the Governor’s official websites.
- E. Unless otherwise specified, the time period for all documents or communications requested is January 1, 2021 to the present day.
- F. The following rules of construction apply to all requests for production:
- a. The terms “all” and “any” shall each be construed as encompassing any and all;
 - b. All uses of the word “each” include “every” (and vice versa);
 - c. The connective terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the requests all responses that might otherwise be construed to be outside of its scope, so that the fullest disclosure of information, documents, and communications is achieved;
 - d. The term “including” shall be construed without limitation;
 - e. The use of a verb in any tense encompasses the use of the verb in all tenses;
 - f. References to agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf include both current and former agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on your behalf; and
 - g. References to any entity include all of that entity’s agents, assigns, employees, partners, successors, predecessors, associates, personnel, staff, officers, agents, representatives, attorneys, and other persons or entities acting or purporting to act on that entities’ behalf.
 - h. The singular number and masculine gender shall include, and be applied as, the plural or the feminine gender or neuter, and vice-versa, as the circumstances of the particular requests may make appropriate.
- G. Each request for documents or communications shall be construed according to its most inclusive meaning so that if information, a document, or a communication is responsive to

any reasonable interpretation of the request, the information, document, or communication is responsive.

H. If you deem any request for documents or communications to call for the production of privileged or otherwise nondisclosable materials and you assert such claim, furnish a list at the time of production identifying each document or communication so withheld together with the following information:

- (1) the reason for withholding each such document, communication, or material, stated with sufficient particularity so as to permit the Court to adjudicate the validity of the claimed privilege;
- (2) a statement of the facts constituting the basis for any claim of privilege or other ground of non-disclosure; and
- (3) a brief description of each such document, communication, or other material, including:
 - (a) the type of document or communication;
 - (b) the date of the document or communication;
 - (c) the name of its author(s) or preparer(s) and an identification by employment and title of each such person(s);
 - (d) the name of each person to whom the document, communication, or other material was sent or who has had access to, or custody of, the document, communication, or other material, together with an identification of each such person(s);
 - (e) the subject matter of the document or communication;
 - (d) the paragraph of this request to which the document, communication, or other material is responsive; and
 - (e) in the case of any document, communication, or other material that relates in any way to a meeting or conversation, identification of such meeting or conversation and the persons attending or participating in such meeting or conversation.

I. You are required by Florida law to produce all requested documents or communications, wherever located, that are in your possession, custody, or control, including documents or communications that you have a right to obtain, or to compel the production of, from any third party (including, but not limited to, any financial institution and telephone carrier).

J. With respect to each request, Plaintiffs request that you identify and produce all documents

or communications that are known to you or that you can locate or discover that are in your possession, custody or control, from whatever source derived, which, directly or indirectly, relate, refer or pertain to the subject matter of the request made, including, without limitation, all such documents or communications in the files (whether they be denominated personal, business or any other files) in the possession, custody or control of you or, as applicable, of your employees, agents, representatives or other persons acting on your behalf or under your control.

- K. Plaintiffs request that, if you have no documents or communications responsive to a request, then you shall so state.
- L. If you assert that any requested document or communication has been lost, destroyed, or discarded, please identify each such document as completely as possible, and provide the following information:
 - a. the date of loss, destruction, or discarding;
 - b. the circumstances of the loss, destruction, or discarding; and
 - c. if destroyed or discarded:
 - i. the manner of destruction or discarding;
 - ii. the reason for destruction or discarding;
 - iii. the identity of the person authorizing the destruction or discarding; and
 - iv. the identity of the person who destroyed or discarded the document or communication.
- M. Plaintiffs request that you produce all responsive documents, communications, or other materials in an orderly manner (and with appropriate markings or other identification) so that Plaintiffs will be able to identify the source of the document, communication, other material, the file in which the document, communication, or other material was maintained, the person to whom such file belongs, and the specific request to which the document, communication, or other material is responsive.
- N. These requests shall be deemed to be continuing so as to require further and supplemental production if you receive or discover additional documents, communications, or other material between the time of original production and the time of any hearing, trial, or other presentation of evidence in this matter.
- O. All documents or communications are to be produced in electronic form. Documents or communications produced electronically should be produced in native format with all metadata intact. For any election or voter data file, please produce in CSV format if available. If this is not available, please produce in PDF format. For other documents or

communications, to the extent documents or communications can be accurately represented in black and white, they should be produced in single-page Tagged Image File Format ("TIFF"), together with any related field-delimited load files (e.g., Concordance DAT, CSV, OPT, LOG). Each TIFF document or communication shall be produced with an image load file in standard Opticon (*.log) format that reflects the parent / child relationship and also includes the beginning Bates number; ending Bates number; beginning Attachment Bates number; ending Attaching Bates number; custodian; date sent (for email messages); date modified (for email and non-email messages) where information is available; author (for email and non-email messages); and subject (for email messages). The TIFF images shall also be accompanied by extracted text or, for those files that do not have extracted text upon being processed (such as hard copy documents), optical character recognition ("OCR") text data; such extracted text or OCR text data shall be provided in document level form and named after the TIFF image. Documents or communications that contain redactions shall be OCR'd after the redaction is applied to the image, and the OCR will be produced in place of extracted text at the document level. Notwithstanding the foregoing, the parties may negotiate a separate production format (including native format) for any documents or communications not reasonably producible or readable as standard image files, such as audio files or large spreadsheets.

- P. For documents or communications produced in TIFF format that originated in electronic form, metadata shall be included with the data load files described above and shall include (at a minimum) the following information: file name (including extension); original file path; page count; creation date and time; last saved date and time; last modified date and time; author; custodian of the document or communications (that is, the custodian from whom the document or communication was collected or, if collected from a shared drive or server, the name of the shared drive or server); and MD5 hash value. In addition, for email documents or communications, the data load files shall also include the following metadata: sent date; sent time; received date; received time; "to" name(s) and address(es); "from" name and address; "cc" name(s) and address(es); "bcc" name(s) and address(es); subject; names of attachment(s); and attachment(s) count. All images and load files must be named or put in folders in such a manner that all records can be imported without modification of any path or file name information.
- Q. If a responsive communication, document, or tangible thing has been prepared in copies that are not identical, or if additional copies have been made that are no longer identical, or if original identical copies are no longer identical by reason of subsequent notations on the front or back of pages thereto, each non-identical copy is a separate communication, document, or tangible thing and shall be produced.
- R. Produce any password-protected documents or communications with any applicable passwords.

RECORDS TO BE PRODUCED

1. All documents and communications related to your February 1, 2022 request to the Supreme Court of Florida for an advisory opinion regarding the Fair Districts Amendments, including but not limited to any documents or communications relating to the decision to seek the advisory opinion, or any documents or communications relating to the Supreme Court of Florida's subsequent order denying the advisory opinion.
2. All documents and communications relating to the Fair Districts Amendments, including but not limited to all documents or communications regarding the applicability of the Fair Districts Amendments or previous judicial opinions or judicial orders regarding the Fair Districts Amendments to any Proposed Plan.
3. All documents and communications relating to the drawing, consideration, or adoption of congressional districts for the 2020 congressional redistricting cycle, including but not limited to communications between and/or among your employees, staff, officers, agents, or representatives, and including but not limited to:
 - a. All documents and communications with or relating to Robert Popper;
 - b. All documents and communications with or relating to Adam Foltz, John Gore, Hans von Spakovsky, Chris Coates, Michael Barley, or Scott Kellar;
 - c. All documents and communications relating to testimony or presentations before the Legislature, including but not limited to any testimony or presentations provided by Alex Kelley.
 - d. All documents and communications between you and the Legislature related to congressional redistricting from June 1, 2021 to the present, including all documents or communications relating to meetings—both formal and informal—with the Legislature related to the drawing of congressional maps, including, without limitation, testimony, meeting minutes, data sets, maps, notes, and plans submitted to, created by, or otherwise considered by you, any member of the Legislature or their staff; minutes, agendas, or presentations from legislative hearings or meetings; and any related communications, including, but not limited to, those with any member of the Legislature (or representatives thereof).
 - e. All documents and communications relating to the March 29, 2022 memorandum from Ryan Newman entitled “Constitutionality of CS/SB 102, An Act Relating to Establishing the Congressional Districts of the State.”
4. All documents and communications concerning Plan P000C0079, Plan P000C0094, and any other Proposed Plan (as specified in the definition above), including but not limited to:
 - a. All documents and communications regarding the potential, expected, or likely partisan performance or electoral outcomes of any district or districts in any Proposed Plan.

- b. All documents and communications concerning any factors that were considered in the creation, consideration, and/or passage of any Proposed Plan.
 - c. All documents and communications concerning any instructions you received or provided regarding the creation of any Proposed Plan.
- 5. Documents and communications sufficient to establish all persons who assisted you in the creation of any Proposed Plan.
- 6. All documents and communications relating to information that was used to draw congressional district maps for Florida in 2022, including, without limitation, and produced in native format: shapefiles; all files or data sets used in Maptitude or other mapping software; and files pertaining to precinct names, precinct lines, partisan indexes or other partisan data, racial data, election results, population shifts, voter registration, voter affiliation, or changing census block lines for the 2018 election, 2020 election, and current redistricting cycle.
- 7. All documents and communications, including, without limitation, requests for proposals, proposals, contracts, and timesheets or invoices, relating to consultants, firms, vendors, or other third parties, including, without limitation, Adam Foltz, that were consulted, involved in, or communicated with by you, any member of the Legislature or its staff, relating to any Proposed Plan.
- 8. All documents and communications relating to drawing any Proposed Plan, with (1) any current or former member of Florida's Legislature and (2) any current or former staff of any current or former member of Florida's Legislature.
- 9. All documents and communications relating to drawing any Proposed Plan with (1) any current U.S Representative or U.S. Senator, including without limitation United States House of Representatives Republican Leadership and House Minority Leader Kevin McCarthy and (2) any current or former staff of any current U.S. Representative or U.S. Senator.
- 10. All documents and communications relating to Congressional redistricting with the Republican National Committee, the Florida Republican Party, including, without limitation, Joe Gruters, the National Republican Redistricting Trust, the National Republican Congressional Committee, including, without limitation, National Republican Congressional Committee Chair Tom Emmer, or any political action committee.

Exhibit B

RETRIEVED FROM DEMOCRACYDOCKET.COM

Rep. Tyler Sirois, Rep. Kaylee Tuck, Rep. Kelly Skidmore, Rep. Christopher Benjamin, Rep. Kamia Brown, Rep. Tom Fabricio, Rep. Elizabeth Anne Fetterhoff, Rep. Joe Harding, Rep. Christine Hunschofsky, Rep. Dotie Joseph, Rep. Chris Latvala, Rep. Randall Maggard, Rep. Ralph Massullo, Rep. Lawrence McClure, Rep. Daisy Morales, Rep. Daniel Perez, Rep. Scott Plakon, Rep. Dana Trubulsky, Rep. Keith Truenow, Rep. Jayce Williamson, Rep. Fentrice Driskell, Rep. Tom Leek, Alex Kelly, Ryan Newmann, DJ, Leda Kelly, LaShonda Jolloway, Nancy Staats, Judy Sheklin, Juanita Powell-Williams, Cristian Cardona, Marsha Davis, Rosemary McCoy, Tameka Hobbs, Barney Roberts, Trish Neely, Larry Colleton, Hedder Pierre-Joseph, Troy Squire, Jonathan Webber, David Rucker, Genesis Robinson, Gail Gardner, Cheryl Jones, Ebony Hardy-Allen, Gail Pressley, Hazel Gillis, Cecile Scoon, Allison Clark, Myrtle Lucas, Od'Juan Whitfield, Carolyn Zonia, Joey McKinnon

Rep. Sirois: The congressional Redistricting Subcommittee will come to order.
DJ, please call the role.

DJ: Chair Sirois?

Rep. Sirois: Here.

DJ: Vice Chair Tuck?

Rep. Tuck: Here.

DJ: Ranking Member Skidmore?

Rep. Skidmore: Here.

DJ: Representatives Benjamin?

Rep. Benjamin: Here.

DJ: Brown?

Rep. Brown: Here.

DJ: Fabricio?

Rep. Fabricio: Here.

DJ: Fetterhoff?

Rep. Fetterhoff: Here.

DJ: Harding?

Rep. Harding: Here.

DJ: Hunschofsky?

Rep. Hunschofsky: Here.

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DJ: Joseph? Joseph? Latvala?

Rep. Latvala: Here.

DJ: Maggard?

Rep. Maggard: Here.

DJ: Massullo? Massullo? McClure?

Rep. McClure: I'm here.

DJ: Morales?

Rep. Morales: Present.

DJ: Perez?

Rep. Perez: Here.

DJ: Plakon?

Rep. Plakon: Here.

DJ: Silvers has been excused. Trubulsky?

Rep. Trubulsky: Here.

DJ: Truenow?

Rep. Truenow: Here.

DJ: Williamson?

Rep. Williamson: Here.

DJ: Ex Officio Driskell?

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Rep. Driskell: Here.

DJ: Ex Officio Leek?

Rep. Leek: Here.

DJ: A quorum is present, Mr. Chair.

Sen. Sirois: Thank you very much, DJ. Members, a few reminders before we begin. Please silence all electronic devices. And if you're here today to give public testimony, please take time now to fill out an appearance form and turn it into the sergeant's staff. As a reminder for our members and speakers today, please turn your microphone on when you are speaking and off when you are finished.

Members, welcome back to Special Session. We have a lot of work ahead of us today, so let's jump right in. For those of you who may be turning in for the first time, and as a refresher for the rest of us, I'd like to first take a moment to recap. We began our redistricting process back in September of 2021. Since then, we've debuted a website, a map drawing application, and held numerous committee meetings. On March 4, the House and Senate both passed committee substitute for Senate Bill 102.

Now, from there, unlike what happens in our state legislative redistricting maps that received Florida Supreme Court review, our congressional redistricting maps do not receive court review. And instead, move like a normal bill, which means they are sent to the governor for approval or veto. On March 29, the bill was sent to the governor, who vetoed it the same day, citing concerns with the United States Constitution. That same day, he issued a proclamation calling the legislature into special session to resolve these concerns and establish Florida's 28 congressional districts to be used in the upcoming election cycle.

Chair Leek and I received a briefing from the governor's office about their proposed map. It is my understanding that the Senate received a similar briefing. I'm glad to inform everyone that the governor's

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office is joining us today to provide that same briefing to all committee members and the public, as well as be available for questions about the proposed map. As the Speaker, as well as the Senate President have stated, our goal during special session is to pass a new congressional map that will both earn the governor's signature and withstand legal scrutiny if challenged. This elected body is responsible to the citizens of Florida to complete our constitutional obligation to pass a congressional map.

Now, let's talk about the flow and the roadmap for today's meeting. We have one bill on the agenda for consideration, House Bill 1C by Rep. Leek. I want to assure members and the public that I intend to allow for enough time for members to ask questions, to hear public testimony, and to allow for debate. I'll be tracking our time closely this afternoon and will keep the committee informed as we move along. Shortly, I will recognize Rep. Leek to explain his bill, which contains the proposed congressional map, P-000C0109.

As you may be aware, 10 districts of this map are from our previously passed legislative map. And 18 of the districts are being newly proposed by the governor's office. Seeing as the House did not have a role in drawing those districts proposed by the governor, we have invited their team to be present today to explain the map and answer questions from members afterwards. As is normal, we will move into public testimony and member debate before taking a vote on House Bill 1C.

I'd like to take a moment to also address decorum. There's been a lot of chatter, speculation, and name calling over the last several weeks in anticipation of this special session and the new proposed map that we'll be considering today. I want to be very clear, today's meeting will proceed with professionalism, civility, and the decorum that Floridians expect of this legislative body. Members of this committee and the public alike will keep their emotions and opinions respectable and thoughtful and not engage in personal or partisan attacks.

As we've talked about since last Fall, there is no single correct

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redistricting map. There is no such thing as the best map. We are here to consider the next map that will govern elections in Florida for the next decade and that is no small feat.

The last housekeeping item before we transition into our bill presentation is that, members, in front of you is the data packet for Map P000C0109. Similar to the packet produced for previous maps we reviewed, this packet contains information such as county and city splits, compactness scores, and functional analysis data. The bill text is also here in front of DJ in this binder if you would like to review it.

Members, up for consideration today is House Bill 1C, establishing congressional districts of the state. And as we've done for every other map presentation, I will ask you to hold questions until all districts have been explained to ensure we get through a description of the entire state and no one region is rushed. Rep. Leek, you are now recognized to present House Bill 1C.

Rep. Leek:

Thank you, Chair Sirois. Before I dive into the map itself, I want to echo Chair Sirois' comments from earlier. We, as legislators, should feel a strong sense of responsibility for passing redistricting maps out of this body. A narrative has started to proliferate that the legislature has somehow ceded its map drawing responsibility to the governor. I find that to be a false narrative and incorrect on its face. We have not ceded any responsibility. In fact, we have done our responsibility once by passing maps during the regular session. And we will complete it again during this special session.

The governor has also fulfilled his responsibility and chose to veto our maps for reasons, I believe, his team will elaborate on today. Both branches of government have a role in this process, just like with any other bill. The only abdication of responsibility would be if we threw our hands up and sent an impasse to the courts allowing them or third parties, all of whom are unelected, to draw our maps. Instead, we have chosen to stay at the table, continue the conversation and hear out the governor and work together because that is not only our responsibility but what Floridians expect of us

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as their legislators.

Our goal for special session is to produce a work product that is legislatively passed and executively signed. It is through that lens that I hope we will all move forward with today's meeting. Now on to the presentation.

Today, we will be presenting Map P000C0109. This is the map reflected in the data packet in front of you, as well as being posted on www.floridaredistricting.gov. As Chair Sirois mentioned, 10 of the districts in this map are exact copies of districts that the legislature passed during the regular session. Those are Congressional Districts 1, 2, 20, 21, 22, 23, 24, 25, 27, and 28. You can see those here on our screen. The new proposed districts that will be presented by the governor's office today consist of Congressional Districts 3 through 19 and 26, as now seen on the screen.

Given the new proposed districts are the focus of today's meeting, I would like to ask Chari Sirois to recognize the governor's office to explain these districts. I'm more than happy to take questions on the legislature's districts after the presentation, but don't want to use our limited time redescribing configurations we've all previously heard several times.

Rep. Sirois: Thank you very much, Rep. Leek. Rep. Skidmore?

Rep. Skidmore: Thank you, Mr. Chair. I'd like to move that the governor's staff be put under oath while testifying in the subcommittee today.

Rep. Sirois: Rep. Skidmore, first of all, that procedure would be different than any of the testimony that we received in our committee thus far. As far as my length of service in the legislature, I think that would be an extraordinary step that I don't feel is necessary, and frankly, I find absurd to seek to put a member of another branch of our government under oath. So, that is not well received by me. As chair, I will choose to decline your request. Rep. Skidmore?

Rep. Skidmore: Thank you, Mr. Chair. Pursuant to Rule 7.2, we have the ability to

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move to have guests who are testifying in committee to be put under oath. And I feel that it is a fair motion under the circumstances. And I'd like to move through that process if we can get a second and a vote on it.

Female Rep.

I second.

Rep. Sirois:

Thank you. Rep. Skidmore, again, I'm going to voice that I think that that is an extraordinary and unnecessary step for us to take. But I will put it to this committee. As we move forward, I think it's a good point out the tone for today's meeting. This is a statehouse, not a courthouse. And that's how I intend to proceed with this committee today. So, in the spirit of working with you and moving our process forward, I will put that to the vote of the committee. And I will ask for a voice vote. Those in favor of putting the witness providing testimony today under oath, please indicate so by saying aye.

Group 1:

Aye.

Rep. Sirois:

And those opposed, please say no.

Group 2:

No.

Rep. Sirois:

In the judgement of the chair, the Nos have it. We'll now proceed. Rep. Driskell?

Rep. Driskell:

[Audio cuts out] [00:10:57].

Rep. Sirois:

All right, on the motion that we just voted on, seeing two hands on the motion that we just had a voice vote on, DJ, I would ask you to call the roll.

DJ:

Chair Sirois?

Rep. Sirois:

No.

DJ:

Representatives Benjamin?

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Rep. Benjamin: Yes.

DJ: Brown?

Rep. Brown: Yes.

DJ: Fabricio?

Rep. Fabricio: No.

DJ: Fetterhoff?

Rep. Fetterhoff: No.

DJ: Harding?

Rep. Harding: No.

DJ: Hunschofsky?

Rep. Hunschofsky: Yes.

DJ: Joseph?

Rep. Joseph: Yes, for transparency.

DJ: Latvala?

Rep. Latvala: No.

DJ: Maggard?

Rep. Maggard: No.

DJ: Massullo?

Rep. Massullo: No.

Rep. Tyler Sirois, Rep. Kaylee Tuck, Rep. Kelly Skidmore, Rep. Christopher Benjamin, Rep. Kamia Brown, Rep. Tom Fabricio, Rep. Elizabeth Anne Fetterhoff, Rep. Joe Harding, Rep. Christine Hunschofsky, Rep. Dotie Joseph, Rep. Chris Latvala, Rep. Randall Maggard, Rep. Ralph Massullo, Rep. Lawrence McClure, Rep. Daisy Morales, Rep. Daniel Perez, Rep. Scott Plakon, Rep. Dana Trabulsky, Rep. Keith Truenow, Rep. Jayce Williamson, Rep. Fentrice Driskell, Rep. Tom Leek, Alex Kelly, Ryan Newmann, DJ, Leda Kelly, LaShonda Jolloway, Nancy Staats, Judy Sheklin, Juanita Powell-Williams, Cristian Cardona, Marsha Davis, Rosemary McCoy, Tameka Hobbs, Barney Roberts, Trish Neely, Larry Colleton, Hedder Pierre-Joseph, Troy Squire, Jonathan Webber, David Rucker, Genesis Robinson, Gail Gardner, Cheryl Jones, Ebony Hardy-Allen, Gail Pressley, Hazel Gillis, Cecile Scoon, Allison Clark, Myrtle Lucas, Od'Juan Whitfield, Carolyn Zonia, Joey McKinnon

DJ: McClure?

Rep. McClure: No.

DJ: Morales? Morales? Perez?

Rep. Perez: No.

DJ: Plakon? Silvers has been excused. Skidmore?

Rep. Skidmore: Yes.

DJ: Trabulsky?

Rep. Trabulsky: No.

DJ: Truenow?

Rep. Truenow: No.

DJ: Tuck.

Rep. Tuck: No.

DJ: Williamson?

Rep. Williamson: No.

DJ: Ex Officio Driskell?

Rep. Driskell: Yes.

DJ: Ex Officio Leek?

Rep. Leek: No.

DJ: Six yeas, 15 nays, Mr. Chair.

Rep. Tyler Sirois, Rep. Kaylee Tuck, Rep. Kelly Skidmore, Rep. Christopher Benjamin, Rep. Kamia Brown, Rep. Tom Fabricio, Rep. Elizabeth Anne Fetterhoff, Rep. Joe Harding, Rep. Christine Hunschofsky, Rep. Dotie Joseph, Rep. Chris Latvala, Rep. Randall Maggard, Rep. Ralph Massullo, Rep. Lawrence McClure, Rep. Daisy Morales, Rep. Daniel Perez, Rep. Scott Plakon, Rep. Dana Trubusly, Rep. Keith Truenow, Rep. Jayce Williamson, Rep. Fentrice Driskell, Rep. Tom Leek, Alex Kelly, Ryan Newmann, DJ, Leda Kelly, LaShonda Jolloway, Nancy Staats, Judy Sheklin, Juanita Powell-Williams, Cristian Cardona, Marsha Davis, Rosemary McCoy, Tameka Hobbs, Barney Roberts, Trish Neely, Larry Colleton, Hedder Pierre-Joseph, Troy Squire, Jonathan Webber, David Rucker, Genesis Robinson, Gail Gardner, Cheryl Jones, Ebony Hardy-Allen, Gail Pressley, Hazel Gillis, Cecile Scoon, Allison Clark, Myrtle Lucas, Od'Juan Whitfield, Carolyn Zonia, Joey McKinnon

Rep. Sirois: Thank you, DJ. Members, the motion fails. The governor's office is recognized. And if you would please identify yourself, sir, for the committee and the record, that would be appreciated.

Mr. Kelly: Thank you, Mr. Chair. Alex Kelly with the Executive Office of the Governor. And I'm a deputy chief of staff for the governor. I should say apologies for the PowerPoint. Obviously, I made the PowerPoint before House Bill 1C was filed. So, I'll be speaking to House Bill 1C and, I guess, the identical content of Senate Bill 2C today. But that said, again –

Rep. Sirois: Mr. Kelly, I'm sorry to interrupt you. If you can pull that microphone a little closer and just speak up a bit.

Mr. Kelly: Thank you. My apology. Again, thank you Mr. Chair, members. Thank you for this opportunity to present the views of the Executive Office of the Governor on the proposed congressional reapportionment plan and to discuss our work and our contributions to this compromise plan.

Just to give you a very brief introduction, frequently today, I'll refer to improvements to the plan. I think, obviously, the chair and the sponsor gave a great introduction to the plan. I'll be really speaking to just the 18 districts that are different. Although, sometimes I'll very generically refer to the plan as a whole. But I really am referring to our specific and my specific contributions to those 18 districts. Often times throughout the presentation, I will compare very specifically this plan, Plan 0109 to the primary plan the legislature passed, Plan 819. Although there are some instances when I'll refer to both and I'll try to remember to identify both when I'm making a comment that definitely refers to both.

So, for the purpose of my introduction, so I am the map drawer of the 18 districts of this plan. Obviously, I assume that context will be helpful. So, I am the map drawer of these districts. To give you a little bit of background on myself, 10 years ago, I was the staff director of the House redistricting committee here on the floor of the House of Representatives. Starting in January of this year, I initially

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served for our office in a role of just providing guidance and oversight to our inhouse counsel and our contract counsel, and also a contract map drawer that we brought on board to help initially start our engagement in this process.

For reference, that contract map drawer that we brought on board, his name is Adam Foltz. The initial map that we supported on behalf of our office, Map 0079 was authored by Mr. Foltz. For just a little context for his background, he has been a map drawer for state legislatures in Wisconsin and Texas, and actually currently, he's drawing maps for the state of Texas at this present time. Much like your professional staff, myself, our map drawer who drew our original map, Map 0079, we've only drawn maps on behalf of state government. Adam Foltz and I collaborated on our office's second contribution, Map 0094. And again, I alone authored the 18 changes, the 18 districts that are changed in the map before you today and how they compare to Map 8019.

Some additional notes, I'll point out at the outset that will be helpful today, one, no one directed me to favor or disfavor a political party or incumbent throughout this process. And I did not draw any districts or make any contributions with the intent of favoring or disfavoring a political party or incumbent. Two, in drawing any of the districts submitted by our office, I did not consider or even look at political data, including party registration, voter data. In other words, I do not the voting history or party registration numbers for any of the districts that I have drawn.

With that said, the only time I did reference political data in my work was early in the process. I did reference political data early in the process when we observing work of the legislature and we were identifying whether or not it was possible to draw a compact African American performing district in northeast Florida to both try to comply with the US constitution and the state constitution and comply with the state constitution in the way that the Florida Supreme Court has interpreted it and the way this legislature has implemented it.

Rep. Tyler Sirois, Rep. Kaylee Tuck, Rep. Kelly Skidmore, Rep. Christopher Benjamin, Rep. Kamia Brown, Rep. Tom Fabricio, Rep. Elizabeth Anne Fetterhoff, Rep. Joe Harding, Rep. Christine Hunschofsky, Rep. Dotie Joseph, Rep. Chris Latvala, Rep. Randall Maggard, Rep. Ralph Massullo, Rep. Lawrence McClure, Rep. Daisy Morales, Rep. Daniel Perez, Rep. Scott Plakon, Rep. Dana Trubulsky, Rep. Keith Truenow, Rep. Jayer Williamson, Rep. Fentrice Driskell, Rep. Tom Leek, Alex Kelly, Ryan Newmann, DJ, Leda Kelly, LaShonda Jolloway, Nancy Staats, Judy Sheklin, Juanita Powell-Williams, Cristian Cardona, Marsha Davis, Rosemary McCoy, Tameka Hobbs, Barney Roberts, Trish Neely, Larry Colleton, Hedder Pierre-Joseph, Troy Squire, Jonathan Webber, David Rucker, Genesis Robinson, Gail Gardner, Cheryl Jones, Ebony Hardy-Allen, Gail Pressley, Hazel Gillis, Cecile Scoon, Allison Clark, Myrtle Lucas, Od'Juan Whitfield, Carolyn Zonia, Joey McKinnon

So, essentially, I took a look at whether or not it was possible to check all the boxes, so to speak, with complying with the US Constitution and the state constitution in drawing a more compact minority performing district. Ultimately, I determined it was not possible to do so.

Three, in drawing the compromise plan that you have before you here today in this legislation, in contributing to our offices to prior proposals and in the totality of our office's engagement in this process, I have not, in any way, consulted with anyone outside the Executive Office of the Governor, our contract counsel, our contract map drawer, the legislature, and its counsel. So, I've only worked within parties here in the House, Senate, and our office, and our contract counsel. Said differently, I can confirm that I've had no discussions with any political consultant, no partisan operative, no political party official concerning any plans proposed by our office and plans considered by the legislature.

In effect, I have engaged in this process, including authoring this proposed compromised plan in a manner that meets the same high standards that you set forth for your professional staff.

And this plan that you're considering today in House Bill 1C, Plan 0109 is indeed a compromise. It is the product of consultation and collaboration between our office, House and Senate leadership. And it incorporates portions of the plan passed by the legislature, as Chair Leek noted, Senate Bill 102 primary plan 8019. Concepts, of course, from 10 districts are included block for block in their entirety in this map. This compromise plan also includes concepts from our two prior office submissions, Plan 0079 and 0094. It also includes concepts from the map that was actually referred out of this subcommittee, Plan 8011, out of the subcommittee on its way to the full committee. And aligns in several other ways that I'll describe with plans considered and the style of the House and Senate's map drawing.

As we noted, in fact, I think Chair Leek did a great job of summarizing the slides. I can probably just skip this. Again, in



CERTIFICATION OF AUTHENTICITY

Date: April 21, 2022

Client: Michelle DePass

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Executed this 21st day of April, 2022.

Sincerely,

Beth Worthy
President

Email: Beth@gmrtranscription.com

Phone: (714) 202-9653

Exhibit C

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

BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

CORD BYRD, in his official capacity as
Florida Secretary of State, et al.,

Defendants.

Case No. 2022-ca-000666

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO REHEARING**

STATE OF WASHINGTON
COUNTY OF KING

BEFORE ME, the undersigned authority, personally appeared Abha Khanna, who, after being duly sworn, deposes and says:

1. I represent the Plaintiffs in this action.
2. I submit this Affidavit in support of Plaintiffs' opposition to the non-parties' motion for rehearing.
3. Pursuant to Rule 1.280(b)(4), this Affidavit specifies the reasons why extraordinary circumstances exist to pierce the work product privilege, even if it applied to documents created by Mr. Adam Foltz.
4. In the lead-up to the passage of Florida's 2022 congressional plan, J. Alex Kelly, the Governor's deputy chief of staff and the person responsible for drawing 18 of the 28 districts in the 2022 Congressional Plan, explained to the Legislature that the state had "brought on board" Mr. Adam Foltz as a "contract map drawer."

5. Mr. Kelly explained that Mr. Foltz played a critical role in the events leading to the passage of the congressional plan that Plaintiffs challenge as unconstitutional. Mr. Foltz had drawn proposed plans for the state, including the first map publicly proposed by the Governor's office, Mr. Kelly explained, and Mr. Foltz had collaborated with Mr. Kelly in drawing the Governor's second publicly proposed map, as well.

6. The documents Mr. Foltz created pursuant to his employment with the State are critical to Plaintiffs' claims that Defendants acted with unconstitutional intent in adopting the state's 2022 Congressional Plan.

7. The United States Supreme Court has identified "legislative or administrative history," such as draft maps in the redistricting context, as bearing directly on whether "invidious discriminatory purpose was a motivating factor" behind a legislative enactment. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977). And last cycle, the Florida Supreme Court relied on legislative history—including draft map proposals and third-party communications with the Legislature—in reaching its conclusions that the state's congressional map was tainted by unconstitutional intent. *See generally League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363 (Fla. 2015).

8. Mr. Foltz's documents, including his draft maps, are capable of revealing the motivations behind the lines of the 2022 congressional plan. The documents are therefore essential to Plaintiffs' understanding of the legislative history and intent behind the 2022 congressional plan.

9. Plaintiffs have no other means of obtaining the crucial information contained in Mr. Foltz's documents. No other source of information could similarly illuminate the map drawing

process conducted by the state. And there is no other party from whom Plaintiffs could seek this information.¹

10. Accordingly, extraordinary circumstances exist to pierce the work product privilege, even if it did apply to Mr. Foltz's documents.

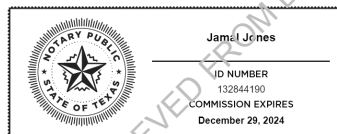
FURTHER AFFIANT SAYETH NOT.

Abha Khanna

ABHA KHANNA

SWORN TO AND SUBSCRIBED before me this 09 day of January 2023, by Abha Khanna, who (check one) ☐ is personally known to me, ☒ produced a driver's license (issued by a state of the United States within the last five (5) years) as identification, or ☐ produced other identification, to wit:

State of Texas; County of Harris



Print Name: Jamal Jones
Notary Public, [Signature]
Commission No.: 132844190
My Commission Expires: 12/29/2024

Notarized online using audio-video communication

¹ While Plaintiffs have issued a notice of intent to serve a subpoena *duces tecum* without deposition on Mr. Foltz himself, the Secretary has already objected to the notice by claiming the documents Plaintiffs seek are protected by the work product privilege. And Mr. Foltz himself may yet assert his own objections to the subpoena once it is issued.