IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

PAMELA MOSES,	)	
	)	
Plaintiff,	)	**Case No. CT-1579-19**
	)	**Division I**
v.	)	
	)	**Judge Felicia Corbin-Johnson**
MARK GOINS, TRE HARGETT, and JONATHAN SKRMETTI, in their official capacities,	)	**Judge Suzanne Cook**
	)	**Judge Barry Tidwell**
	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO PRODUCE DOCUMENTS AND ANSWER INTERROGATORIES

Plaintiff Pamela Moses respectfully submits this Motion to Compel Defendants Mark Goins, Tre Hargett, and Jonathan Skrmetti to participate in good faith in the discovery process, specifically to search for documents in response to Plaintiff's requests, to produce responsive nonprivileged documents, and to answer Plaintiff's interrogatories fully and under oath. To date, Defendants have engaged in a series of delay tactics by asserting meritless objections to Plaintiff's discovery requests and otherwise shirking their discovery obligations. These tactics are impeding Plaintiff's ability to prosecute her case and the Panel's ability to resolve this case on the merits in a timely manner. Accordingly, to keep this case on track for the scheduled March 2025 trial date, Plaintiff requests that the Panel order Defendants to (1) produce a list of the searches they have conducted heretofore, including the document repositories searched, the custodians searched, the search terms used, and the time frames applied; (2) conduct additional searches for responsive documents; (3) produce responsive documents and data, including appropriate metadata; (4) produce supplemental discovery responses fully responding to the discovery requests,

removing meritless objections, and specifying an answer for each request from each Defendant to Plaintiff's interrogatories; and (5) fully answer all of Plaintiff's interrogatories under oath.

INTRODUCTION

On April 9, 2024, during a meet-and-confer conference, Plaintiff learned for the first time that Defendant Skrmetti has neither searched for any responsive documents nor produced a single document in this case, despite nearly a year and a half of representations that Defendants' discovery responses were submitted jointly on behalf of all Defendants. This recent admission is part of a pattern of delay and refusal to participate meaningfully in discovery. In summary:

- Defendant Skrmetti has refused to participate in discovery at all, though he failed to disclose that fact to Plaintiff or the Panel for well over a year;
- Defendants have refused to make good faith searches for documents and data responsive to Plaintiff's requests, while at the same time attempting to block Plaintiff's attempts to take discovery from third parties (which is the subject of other pending motions);
- Defendants have refused even to discuss what searches—if any—they have done for responsive documents and data;
- Defendants have refused to perform the same or similar searches they have already performed in another related case currently being litigated in federal court;
- Defendants have littered their written responses with boilerplate and contradictory objections in an attempt to delay and obstruct this case and to conceal their discovery failures;
- Defendants have refused to answer multiple interrogatories and requests for production based on spurious objections; and

- Defendants have refused to verify their interrogatory responses.[1]

The executive branch of the State of Tennessee is not above the law. The Attorney General, Secretary of State, and Coordinator of Elections—like any other litigants—must comply with the Rules of Civil Procedure. Defendant Skrmetti cannot, as he appears to contend, unilaterally decide not to participate in discovery based upon his own belief that he should not be a defendant in this case. No litigant—even the Attorney General—may disregard the Rules based upon his own conclusions about whether he is a proper party; nor may he represent that he is participating in discovery when he actually is not and thereby perpetuate a long-running subterfuge to obfuscate the fact that he is violating those same Rules. His actions here have set the entire discovery process back substantially and do not display good-faith participation in this case.

Defendants Hargett and Goins fare almost as poorly. They have objected that they were not required to participate in discovery on the ground that they had not been adequately served the Second Amended Complaint.[2] This objection to participating in discovery—specious as it is—has been waived given that Defendants have served written responses and (ostensibly) searched for and produced documents anyway. What has become clear, however, is that Defendants Hargett and Goins—like Defendant Skrmetti—may have used this meritless objection to avoid performing searches for responsive documents, all while hiding that fact from Plaintiff by (1) largely producing documents that were simply copied from productions made in other litigation and

[1] However, Defendants' counsel has recently represented that they are working to verify the interrogatory responses of Defendants Hargett and Goins.

[2] Defendants have made this objection even though they were served with the Second Amended Complaint under Rules 5.01 and 5.02 via the Court's e-filing system; they never moved to dismiss the Second Amended Complaint based on lack of service, despite moving to dismiss on *other* grounds; and they otherwise litigated this case accepting the Second Amended Complaint as the complaint of record. In any case, to resolve Defendants' meritless objection, Plaintiff recently served the Second Amended Complaint again via certified mail.

(2) refusing to tell Plaintiff what—if any—searches Defendants actually performed. Defendants Hargett and Goins may have performed zero (or close to zero) searches; Plaintiff does not know, however, because Defendants have refused to participate in the discovery process in good faith.

At the end of the day, the resolution of this motion is simple: Defendants, like any other litigants, are obligated to follow the Rules and participate in the discovery process, which means that they must, among other things, conduct reasonable searches for documents responsive to Plaintiff's requests, produce non-privileged responsive documents, and fully answer interrogatories under oath. Plaintiff respectfully requests that the Panel order them to do so promptly.

BACKGROUND

I. Plaintiff's First Set of Requests for Production and Interrogatories

Plaintiff served her First Set of Requests for Production ("First RFPs") and First Set of Interrogatories ("First Interrogatories") on December 30, 2022. [*See* Plf.'s First RFPs (attached as **Exhibit A**); Plf.'s First Interrogatories (attached as **Exhibit B**)].

All three Defendants responded to Plaintiff's RFPs ("First RFP Response") and interrogatories ("First Interrogatory Response"), stating that they were both objecting to, and responding to, them on February 21, 2023. All three Defendants represented for both the RFPs and interrogatories that they were "performing a reasonable inquiry and search for information as required by the applicable Tennessee Rules of Civil Procedure." [Defs.' First RFP Response, at 3 (attached as **Exhibit C**); Defs.' First Interrogatory Response, at 1 (attached as **Exhibit D**)]. Defendants subsequently supplemented their objections and responses to Plaintiff's First RFPs on June 23, 2023. [Defs.' Supplemental First RFP Response (attached as **Exhibit E**)].

In early March of 2023, Plaintiff's counsel engaged in a telephonic meet-and-confer about Defendants' discovery responses. Plaintiff followed up that meet-and-confer by requesting

Defendants' position and supplemental responses and documents on March 28, 2023; again on April 3, 2023; again on April 10, 2023; again on April 18, 2023; and again on June 16, 2023 (after an agreed protective order had been signed and filed, which resolved a few, but nowhere near the majority, of the discovery issues). [*See* Email Correspondence between John Haubenreich and Robert Wilson (attached as **Exhibit F)**]. Defendants finally produced supplemental responses and documents on June 23, 2023.

Shortly thereafter, the Panel ruled on Defendants' Motion to Dismiss, after which Defendants filed their Motion to Revise and Permit Interlocutory Appeal which, in addition to Plaintiff's attempt to get critical documents and data via third-party subpoena, absorbed most of the Parties' and Panel's attention during the Fall of 2023. Nevertheless, in an effort to push forward on discovery despite the multiple pending motions, Plaintiff sent Defendants a formal deficiency letter detailing a number of deficiencies in Defendants' RFP and interrogatory responses on November 21, 2023. [Plf.'s First Deficiency Letter (attached as **Exhibit G**)]. The parties then held a telephonic meet-and-confer conference. Almost two months later on January 19, 2024, Defendants responded to Plaintiff's deficiency letter, largely referring Plaintiff back to their prior objections. [Defs.' First Deficiency Letter Response (attached as **Exhibit H**)].

II. Plaintiff's Second Set of Requests for Production and Interrogatories

Meanwhile, pursuant to the Panel's Order, Plaintiff served her Second Set of Requests for Production ("Second RFPs") and Second Set of Interrogatories ("Second Interrogatories") on November 8, 2023. [*See* Plf.'s Second RFPs (attached as **Exhibit I**); Plf.'s Second Interrogatories (attached as **Exhibit J**)].

On December 8, 2023, all three Defendants responded to Plaintiff's RFPs ("Second RFP Response") and interrogatories ("Second Interrogatory Response"), stating that they were both objecting to, and responding to, the RFPs and interrogatories. Again, all three Defendants

represented for both the RFPs and interrogatories that they were "performing a reasonable inquiry and search for information as required by the applicable Tennessee Rules of Civil Procedure." [Defs.' Second RFP Response, at 3; Defs.' Second Interrogatory Response, at 1]. As in the responses to the first sets of discovery, Defendant Skrmetti did not object to providing discovery because of his contention that his standing affirmative defense precludes him from having to participate in discovery.

After dealing with the deficiency letter from Plaintiff's first sets of RFPs and interrogatories, Plaintiff sent Defendants a deficiency letter regarding Defendants' Second RFP Response and Second Interrogatory Response on February 2, 2024. [Plf.'s Second Deficiency Letter (attached as **Exhibit M**)]. In response to the deficiency letter, Defendants supplemented their responses and provided additional discovery, which necessitated Defendants seeking a protective order from the Court prior to producing the additional discovery to Plaintiff. [*See* Defs.' Supplemental Discovery (attached as **Exhibit N**)].

The parties held a meet-and-confer conference on April 9, 2024. At the conference, counsel for Defendants revealed for the first time that Defendant Skrmetti had not produced any documents and made clear that his position was that he did not have to produce any documents, provide any answers to Plaintiff's RFPs or interrogatories, or verify any interrogatory responses provided to Plaintiff based on his claim that he was not a proper party to this litigation. Defendants' counsel also represented that it was the position of Defendants Hargett and Goins, who had produced documents to Plaintiff just a few weeks earlier, that they were not obligated to participate in discovery because they had not been properly served with the Second Amended Complaint.

LEGAL STANDARD

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party." Tenn. R. Civ. P. 26.02.

Interrogatories must be fully answered, and objections must be stated with specificity and made in good faith. Rule 33.01 provides in pertinent part:

> Each interrogatory shall be answered separately and fully in writing under oath, unless an objection is made to it or to a portion thereof, in which event the reasons and grounds for objection shall be stated with specificity **in lieu of an answer** for that portion to which an objection is made. **An objection must clearly indicate whether responsive information is being withheld on the basis of that objection. The answers are to be signed by the person making them,** and the objections signed by the attorney making them.

Tenn. R. Civ. P. 33.01 (emphasis added). Similarly, Rule 34.02 sets forth the requirements for a response to a request for production of documents:

> The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, including an objection to the requested form or forms for producing electronically stored information, stating with specificity the grounds and reasons for objecting to the request. If objection is made to part of an item or category, the part shall be specified. **An objection must state whether any responsive materials are being withheld on the basis of that objection.**

Tenn. R. Civ. P. 34.02 (emphasis added).

Under Rule 37.04, a motion to compel discovery is appropriate where, as here, a party has responded deficiently:

> If a party . . . fails . . . to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or . . . to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of Rule 37.02.

Tenn. R. Civ. P. 37.04. In addition,

> If … a party fails to answer an interrogatory submitted under Rule 33 or . . . fin response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer or designation, or an order compelling inspection in accordance with the request.

Id. at 37.01(2).

"Trial courts are afforded wide discretion with regard to discovery decisions." *Estate of Elrod v. Petty*, 2016 WL 3574963, at *6 (Tenn. Ct. App. June 23, 2016). Under the Rules, "an evasive or incomplete answer is to be treated as a failure to answer." *Id.* at 37.01(3).

ARGUMENT

I. Defendants Must Participate in Discovery

A. Attorney General Skrmetti Must Participate in Discovery

Defendant Skrmetti—along with the other Defendants—moved to dismiss the Second Amended Complaint on grounds other than standing. In response to RFPs and interrogatories, Defendant Skrmetti submitted objections and responses that included a large number of general and boilerplate objections, but did not include standing as an objection to responding. That objection only appears as an affirmative defense in his Answer and in Defendants' First Deficiency Letter Response. Now, Defendant Skrmetti has made clear in a meet-and-confer regarding discovery that, based on his belief that he is improperly named as a defendant in this case and plaintiff lacks standing to sue him, he is not obligated to participate in discovery. As a result, Defendant Skrmetti has produced zero documents in response to RFPs, has not conducted any searches in response to RFPs or interrogatories, and refuses to answer interrogatories under oath.

There is no basis for Defendant Skrmetti to assert lack of standing as a basis to refuse to participate in discovery in this case. To begin with, he did not raise this objection in any of the four sets of objections and responses to Plaintiff's discovery requests. To the contrary, he represented that he was "performing a reasonable inquiry and search for information" despite it

now being abundantly clear that he did not do so, and either never intended to or later decided not to without supplementing his discovery responses. Nor are affirmative defenses in an answer a basis to refuse to participate in discovery. The Panel entered a scheduling order in this case that included deadlines for discovery. Defendant Skrmetti's motion to stay discovery on other grounds was denied. Regardless of Defendant Skrmetti's opinion about whether he *should be* a defendant in this case, he is. No party can unilaterally refuse to participate in discovery because they do not think they should be a defendant.

Now is also not the appropriate time to litigate Defendant Skrmetti's affirmative defense. He could have raised it in a motion to dismiss, but did not (and, as such, may have waived such a defense). He could have moved to stay discovery or for a protective order, but did not. Instead, he simply decided not to participate in discovery of his own accord without telling anyone. If Defendant Skrmetti thought the rules were different with regard to him as opposed to any other litigant, it was incumbent on him to raise that issue with the Panel, not simply ignore his discovery obligations and sandbag Plaintiff by having his counsel sign written discovery responses that indicate they were served on behalf of all three defendants. He did not do so, and should not be permitted to do so now. Regardless of the ultimate merits of Defendant Skrmetti's affirmative defense, he should not be permitted to use it to get out of participating in discovery, much less under these circumstances. Accordingly, like any other litigant, Defendant Skrmetti should be required to participate in discovery by searching for responsive documents, producing documents, and answering interrogatories under oath.

B. Secretary of State Hargett and Coordinator Goins Must Participate in Discovery

Defendant Hargett and Defendant Goins must also participate in discovery. They contend that they are not obligated to participate in discovery because they were not properly served with

the Second Amended Complaint.[3] Like Defendant Skrmetti, they did not move to dismiss on that basis, nor did they raise it in their first answer on August 29, 2023. Instead, they raised it in their responses and objections to Plaintiff's RFPs and Interrogatories and added it as an affirmative defense in an amended answer on February 20, 2024.

Despite the claims that they were not properly served, Defendants Hargett and Goins have otherwise fully participated in this case (aside from their deficient discovery responses). They moved to dismiss the complaint (on other grounds). They filed an Answer. They moved to stay discovery. They sought protective orders. They moved to quash third party subpoenas. They even took advantage of the discovery rules to seek their own affirmative discovery from Plaintiff. [Defs.' First Set of Interrogatories and Request for Production of Documents (attached as **Exhibit O**)].

They have also ostensibly participated (to some extent) in discovery, though—as described below—Plaintiff has come to doubt how much Defendants have *actually* participated. They have produced documents and answered interrogatories (but not under oath). Like Defendant Skrmetti, they repeatedly represented that they were "performing a reasonable inquiry and search for information." In other words, it would appear on the surface that, like their numerous other general and boilerplate objections, their lack of service objection to participating in discovery was an objection without anything behind it.

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[3] They were. *See supra* at note 2. At worst, like Defendant Skrmetti's meritless standing objection, Defendants Hargett and Goins waived any such objection as a basis not to participate fully in discovery by failing to raise it with the Panel and by continuing to litigate the case and act in a manner evincing the fact that they accepted the Second Amended Complaint as having been served and as the complaint of record. Just like the objection made by Defendants' counsel on behalf of Defendant Skrmetti, this "objection" was simply another attempt to obstruct and delay the discovery process.

But, as was made clear at the most recent meet-and confer conference, this is far from the case. Defendants Hargett and Goins appear to be contending that they can unilaterally decide to not participate in this case when it suits them. They responded to RFPs and produced documents, but refuse to say what searches—if any—they have conducted. As discussed in Section II.A., below, it appears that what searches they conducted (if any) were woefully insufficient.

Accordingly, Defendants Hargett and Goins must *fully* participate in discovery. Discovery is not a "choose your own adventure" and litigants do not have the discretion to unilaterally decide when they want to participate and when they would rather not. Like any other litigant, Defendants Hargett and Goins are required to participate in discovery, and participate *fully*. This includes conducting searches for documents and information requested by Plaintiff, producing all non-privileged responsive documents, and answering interrogatories fully under oath.

II. Defendants Have Not Meaningfully Participated in Discovery and This Court Should Compel Them to Participate Fully

Although Defendants contend that they are not required to participate in discovery, they represented that they are "performing a reasonable inquiry and search for information as required by the applicable Tennessee Rules of Civil Procedure." Defendants Goins and Skrmetti have produced some documents and all three defendants have purported to answer some interrogatories, albeit not under oath. To date, Defendants have not complied with their discovery obligations and these deficiencies are readily demonstratable in multiple (non-exhaustive) ways. Defendants appear to have conducted few (if any) searches for documents and information responsive to Plaintiff's RFPs and interrogatories and have not produced all responsive documents in their possession, custody, and control. This is demonstratable for several reasons despite Defendant Hargett's and Goins's refusal to discuss with Plaintiff what efforts they have undertaken to identify

and produce responsive documents and information. As a result, Court intervention is necessary to force Defendants to comply with their discovery obligations.

A. Defendants Have Failed to Comply with Their Discovery Obligations

There can be no dispute that there are documents responsive to Plaintiff's requests that have not been produced. This is readily apparent for a number of reasons.

First, Defendant Skrmetti's counsel informed Plaintiff's counsel at a meet-and-confer that he had not produced a single document.

Second, Defendants Hargett and Goins have produced few documents. They have only produced approximately 2,750 documents totaling 3,500 pages. A substantial percentage of the small number of documents produced by Defendants are denial letters sent to Tennesseans, who applied for the restoration of their voting rights, stating that the resident's application was denied for a reason *other than the permanent disenfranchisement statutes* at issue in this case. For instance, many of the produced documents feature denials based on the applicant's failure to stay up-to-date with child-support obligations, unpaid court costs, or a generic incomplete/insufficient documentation. However, Defendants' production does not contain many of the underlying documents supporting the application denials. During the course of meet-and-confer discussions, Plaintiff's counsel asked Defendants' counsel about the production of those underlying documents, and Defendants' counsel indicated that those documents were not relevant because they did not relate to the permanent disenfranchisement statutes at issue in this case. But if the underlying documents supporting these application denials are not relevant, so too would be the rejection letters based on grounds other than Tennessee's permanent disenfranchisement statutes, *many of which Defendants produced*. The production of those denial letters, in conjunction with Defendants' position that the broader voting rights restoration process is not relevant, creates the impression that Defendants have merely reproduced some of the documents produced in related

lawsuit in federal court related to the broader voting rights restoration process without conducting reasonable searches for documents responsive to Plaintiff's requests in this case.

Third, Defendants have objected to a number of requests on the basis of privilege but have not produced a privilege log, and have indicated that they do not intend to provide one.[4] *See* Tenn. R. Civ. P. 26.02(5) (requiring a party objecting on privilege to "describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege protection"). Given who the Defendants are, the issues involved in this case, and the scope of Plaintiff's requests, one would expect there to be a fairly large number of responsive documents that are privileged. Or, at the very least, that there would be one. It is apparent that the lack of any privileged documents—combined with Defendants' counsel's representation that no documents were withheld on the basis of their privilege objections—can only mean that few, if any, searches were conducted in response to Plaintiff's requests.

Fourth, Plaintiff's requests are such that one would expect that a large number of documents would be produced. For example, Defendants identified by name six "employees in the Division of Elections [who] are involved in identifying individuals who are ineligible to register to vote in Tennessee due to a felony conviction." [Defs.' First Interrogatory Response, No. 2]. Other interrogatories identified that these employees used email to communicate relevant information. [*See, e.g.*, Defs.' First Interrogatory Response, No. 5 ("[E]mployees of the Division of Elections will communicate by telephone or email with court clerks to confirm a felony conviction or to obtain information concerning an individual's application for a certificate of

[4] This is despite raising a privilege objection to each set of Plaintiff's RFPs and interrogatories.

restoration."), No. 4 ("Defendant Goins will communicate with District Attorneys General either by telephone or email regarding persons who are alleged to have committed voter fraud or voter registration fraud.")]. And yet, out of the pages produced, only a few dozen pages (once duplicates are removed) reflect emails, and these are clearly only emails directly related to, and discussing, Plaintiff Pamela Moses herself.

As another example, one of Plaintiff's RFPs requested "all documents referred to or identified in your responses to Plaintiff's Interrogatories." [Plf.'s First RFP, No. 1]. But yet, Defendants somehow answered that they "are not in possession of any documents responsive to Request No. 1." [Plf.'s First RFP Responses, at 4]. Indeed, a number of interrogatories refer to, and identify, documents responsive to this request that have not been produced:

- Notices of federal felony convictions from the federal courts (Defs.' First Interrogatory Responses, at No. 1);
- Notices of state felony convictions from the Tennessee Department of Correction (Defs.' First Interrogatory Responses, at No. 1);
- Email communications between employees of the Division of Elections and County Election Commissions regarding notices of federal felony convictions (Defs.' First Interrogatory Responses, at No. 3);
- Reports of state felony convictions (Defs.' First Interrogatory Responses, at No. 3);
- Communications between employees of the Division of Elections and County Election Commissions via the State's Automated Electoral System regarding reports of state felony convictions (Defs.' First Interrogatory Responses, at No. 3);
- Email communications between Defendant Goins and District Attorneys General regarding persons who are alleged to have committed voter fraud or voter registration fraud (Defs.' First Interrogatory Responses, at No. 4); and
- Email communications between employees of the Division of Elections and court clerks regarding confirmation of felony convictions or requests for information concerning applications for certificates of restoration (Defs.' First Interrogatory Responses, at No. 5).

It is thus apparent that the response to this RFP is incorrect, and Defendants are in possession of a number of documents responsive to this request that have not been produced.

As yet another example, Defendants state that they are "not in possession of any documents responsive" to Plaintiff's RFP No. 8 which requests "memoranda, presentations, notes, research, communications, or other documents related to T.C.A. § 40-29-105(c)(2)(B) or § 40-29-204." [Defs.' First Interrogatory Response at 8]. But Plaintiff is aware of at least two documents responsive to this request that were not produced by Defendants, one of which is a memorandum from Defendant Goins. [*See* Mark Goins, Memorandum, Subj: Restoration of Voting Rights (July 21, 2023) (attached as **Exhibit P**); Felon Restoration FAQs (attached as **Exhibit Q**)]. And, in numerous other responses to RFPs, Defendants state that they "are not in possession of any documents responsive" to the requests. [*See, e.g.*, Defs.' First RFP Responses (responses to RFP Nos. 1, 3, 4, 5, 6, 8, 9, 10, 11, 12].

Fifth, Defendants have produced many more documents in a similar case currently being litigated in the United States District Court for the Middle District of Tennessee than have been produced here. In that case, Defendants produced a number of documents, including emails and communications of Defendant Goins, and identified in a privilege log numerous responsive documents being withheld on the basis of privilege. For example, one privilege log in that case shows numerous emails to and from Defendants Goins and Hargett, as well as emails involving some of the individuals Defendants specifically identified in their interrogatory responses of having relevant information. [*See* Defendants' Privilege Logs, *Tennessee Conference of the NAACP v. Lee*, 3:20-cv-01039 (M.D. Tenn.), ECF Nos. 200-7, 202-1 (attached as **Exhibit R**)].

Based on all this, it is apparent that Defendants have not produced numerous responsive documents.

B. Defendants' Refusal to Discuss What Documents They Have and What Searches They Have Conducted Necessitate the Court's Involvement in This Discovery Dispute

In the **very first meet and confer** in March of 2023, Plaintiff's counsel raised the issue of what searches were performed (*i.e.*, which custodians, what search terms were used, what time frames were used) and requested a privilege log.[5] Since then, Plaintiff has tried on multiple occasions to confer with Defendants regarding the efforts they have taken to respond to her requests and interrogatories in an attempt to cooperatively resolve these discovery disputes. Courts have recognized that the need for cooperation among the parties regarding discovery is especially

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[5] *See* Email Correspondence (emphasis added) (attached as **Exhibit F**, at 6-7):

> Robert,
>
> I meant to send this the other day, but just to keep us on the same page, this is what I recall we decided: . . .
>
> - #13: Given that there don't appear to have been any emails--internal or external--produced (except for a few directly related to Ms. Moses), **you're checking on (a) what repositories were searched; (b) for which custodians; and (c) if any search terms and/or date or other limitations were used (and if so, which ones).**
> - #14: Given my clarification that this was seeking communications with persons determined to be ineligible to register and/or vote by virtue of conviction of a felony and that no emails or other communications (other than the form letters) have been produced, **you're checking on (a) what repositories were searched; (b) for which custodians; and (c) if any search terms and/or date or other limitations were used (and if so, which ones).**
> - #15: Given that there don't appear to have been any emails--internal or external--produced in response to this Request, **you're checking on (a) what repositories were searched; (b) for which custodians; and (c) if any search terms and/or date or other limitations were used (and if so, which ones).**
> - #16: Given that there are very few emails produced in response to this Request (and given Ms. Moses' long history with the Attorney General's Office/District Attorney's Office), **you're checking on (a) what repositories were searched; (b) for which custodians; and (c) if any search terms and/or date or other limitations were used (and if so, which ones). Just a heads-up: If there are going to be privileges asserted here, I need to know, and I'll need a privilege log as well.**

important for electronically stored information, stating that the discovery process "must be a *cooperative and informed* process." *Goree v. United Parcel Serv., Inc.*, No. 14-cv-2505, 2015 WL 11120572, at *4 (W.D. Tenn. Oct. 30, 2015) (citation omitted) (emphasis in original); *see also id*. ("[T]he best solution in the entire area of electronic discovery is cooperation among counsel." (citation omitted)).

Defendants, however, have declined to confer with Plaintiff about the searches and other efforts they have conducted. Defendants have also not indicated that there is any undue burden or cost in producing responsive documents. *See* Tenn. R. Civ. P. 26.02(1). In addition, Defendants' counsel has represented that no responsive documents have been withheld based on any of Defendants' objections which, as discussed in Section II.A., above, only raises more questions about the adequacy of Defendants' efforts to comply with their discovery obligations.

As a result of this stonewalling by Defendants, Court intervention is required to compel Defendants to participate in discovery, conduct reasonable searches for documents, produce documents, and fully and properly answer Plaintiff's RFPs and interrogatories. This should include an order by this Panel compelling Defendants (1) to state what searches have been conducted, including identifying the custodians, time frames, and search terms; (2) to conduct reasonable searches to identify responsive documents for production; and (3) to produce an appropriate privilege log.

III. Other Objections By Defendants to Plaintiff's RFPs and Interrogatories Are Without Merit and Should Be Rejected

Because of Defendants' failures to search for, and produce, responsive documents and to answer Plaintiffs' interrogatories, each and every discovery response is deficient. It is therefore premature and a waste of judicial resources to litigate Defendants' objections to RFPs and interrogatories on a request-by-request basis. Plaintiff is optimistic that an order requiring

Defendants to fully participate in discovery and supplement their productions and discovery responses will alleviate the need to litigate many of Defendants' other objections. Accordingly, Plaintiff does not raise those issues in this motion, but reserves the right to do so at a later date, if necessary. Nevertheless, litigating a handful of Defendants' objections at this point would be beneficial to provide some resolution and clarity going forward, and thereby further help avoid the need for further Court intervention into the discovery process.

A. Defendants' General and Boilerplate Objections Are Improper, Ineffective, and Should Be Ignored

Each of Defendants' responses to the RFPs and interrogatories include several pages of general objections before responding to the respective interrogatories or RFPs. [Defs.' First RFP Response, at 1-4; Defs.' Second RFP Response, at 1-4; Defs.' First Interrogatory Response, at 2-4; Defs.' Second Interrogatory Response, at 2-4]. In addition, in response to virtually every RFP or interrogatory, Defendants include improper boilerplate objections without making any attempt to explain the basis for the objections nor indicating whether any responsive information was withheld on the basis of the improper objections. These general and boilerplate objections have been waived and should be wholesale ignored as they are improper and ineffective as objections.

Objections to interrogatories or RFPs must "be stated with specificity" and "vague, generalized or 'boilerplate' objections are improper." Tenn. R. Civ. P. 33.01, Advisory Commission Comment (2020); Tenn. R. Civ. P. 34.02, Advisory Commission Comment (2020). Foreseeing the impropriety of their objections, Defendants state that these boilerplate objections "are not 'general objections'; they are objections applicable to each Interrogatory [or Request] unless specifically stated in the response" and are incorporated by reference into each response. [Defs.' First Interrogatory Response, at 2; Defs.' First RFP Response, at 1; Defs.' Second

Interrogatory Response, at 2; Defs.' Second RFP Response, at 1]. But merely stating that a boilerplate objection is not a boilerplate objection does not make it so.

"A 'boilerplate' objection is one that is invariably general; it includes, by definition, '[r]eady-made or all-purpose language that will fit in a variety of documents.'" *Avantax Wealth Mgmt., Inc. v. Marriott Hotel Servs., Inc.*, No. 3:21-cv-00810, 2022 WL 18638754, at *6 (M.D. Tenn. Sept. 28, 2022) (quoting "Boilerplate," Black's Law Dictionary (10th ed. 2014)). An objection is boilerplate if it "merely states the legal grounds for the objection without (1) specifying how the discovery request is deficient and (2) specifying how the objecting party would be harmed if it were forced to respond to the request." *Id.* (citation omitted). "Boilerplate objections, such as the discovery requests are 'overly broad,' are 'vague,' are 'not proportional to the needs of the case,' or are 'unduly and substantially burdensome,' are 'legally meaningless and amount to a waiver of an objection.'" *Commonspirit Health v. Healthtrust Purchasing Grp., L.P.*, No. 21-cv-00460, 2022 WL 19403858, at *2 (M.D. Tenn. July 13, 2022) (quoting *Waskul v. Washtenaw County Community Mental Health*, 569 F.Supp3d 626, 637 (E.D. Mich. 2021))); *see* Tenn. R. Civ. P. 33.01, Advisory Commission Comment ("[A] responding party may object to a Rule 33 interrogatory as overly broad on the grounds that the time period covered is too long, or that the breadth of sources from which documents are sought is unduly burdensome, providing the specific bases therefore, and further making clear whether the objection is being made in whole or in part."); Tenn. R. Civ. P. 34.02, Advisory Commission Comment (same).

Nor are Defendants' objections stated with specificity, as required by the 2019 and 2020 amendments to Rules 34.02 and 33.01, respectively, "to require that objections to [RFPs and] interrogatories be stated with specificity." Tenn. R. Civ. P. 33.01, Advisory Commission Comment

(stating that the rule "is amended to require that objections to interrogatories be stated with specificity"); Tenn. R. Civ. P. 34.02, Advisory Commission Comment (same for RFPs).

In addition, these objections are deficient as Defendants do not make clear what (if anything) is being withheld pursuant to them. *See* Tenn. R. Civ. P. 33.01, Advisory Commission Comment (2020) ("In addition, the rule is amended to require that any objection or response under Rule 33 make clear whether information is actually being withheld pursuant to that objection, if any."); Tenn. R. Civ. P. 34.02, Advisory Commission Comment (2019) (same for RFPs). Plaintiff would be in the precise circumstance this requirement sought to avoid—"uncertain[ty] whether and to what extent relevant and responsive information has be been withheld on the basis of the objection," Tenn. R. Civ. P. 33.01, Advisory Commission Comment; Tenn. R. Civ. P. 34.02, Advisory Commission Comment (same)—except that at the most recent meet-and confer Defendants' counsel stated that nothing had been withheld on the basis of any of Defendants' objections. But in clarifying that Defendants' objections are not deficient in this respect, Defendants confirm that their objections are worthless boilerplate objections that serve no purpose as nothing being withheld on the basis of them.[6]

Accordingly, all of Defendants' general and boilerplate objections have been waived, should be disregarded "as if they were never made," and Defendants should be compelled to fully and completely respond to each interrogatory and request for production and be precluded from re-asserting these objections. *Ritacca v. Abbott Labs.*, 203 F.R.D. 332, 335, n.4 (N.D. Ill. 2001).

[6] Furthermore, as discussed in Section II.A., that Defendants have not withheld any documents or information on the basis of any objection undermines any claim that they have complied with their discovery obligations, as, when combined with the small number of documents produced and information provided, it is apparent that the issue is that Defendants have not conducted searches in the first place.

B. Plaintiff's RFPs and Interrogatories Are Not Beyond Scope of The Court's October 13, 2023, Order

Defendants object to multiple RFPs and interrogatories as beyond the scope of the Court's October 11, 2023, Order. [*See* Defs.' Second RFP Response, at Nos. 23, 24; Defs.' Second Interrogatory Response, at Nos. 11, 13, 17, 19, 20, 21, 22]. These objections are ineffective as Defendants did not adequately specify why these requests and interrogatories are beyond the scope, they proceeded to answer the requests, and do not state whether anything is being withheld on the basis of these objections. Defendants' objections also fail on the merits, as these requests are all within the scope of the Court's Order.

The Court's Order permitted Plaintiff to propound three categories of party-discovery: (1) race/ethnicity in conviction data; (2) voting pattern data; and (3) legislative history of the 1986 and 2006 versions of the challenged felon disenfranchisement statute(s). [*See* Order on Motion to Propound Additional Discovery (Oct. 11, 2023)]. Defendants only generically object to these requests and interrogatories as being beyond the scope of the Court's Order and do not provide any specificity explaining their objection. *See* Tenn. R. Civ. P. 34.02 (requiring a party objecting to an RFP to "stat[e] with specificity the grounds and reasons for objecting to the request"); Tenn. R. Civ. P. 33.01 (requiring a party to state the "reasons and grounds for objection … with specificity in lieu of an answer"). Nor do Defendants indicate whether any responsive information was withheld. *See* Tenn. R. Civ. P. 34.02 ("An objection must state whether any responsive materials are being withheld on the basis of that objection."); Tenn. R. Civ. P. 33.01 (same). Thus, these objections should be disregarded.

On the merits, Defendants' objections are baseless as these RFPs and interrogatories are squarely within the scope of the Court's order. For example:

- RFP 23. Please produce all documents, including databases, lists, tables, or other records, related to any and all denials after July 1, 2006 of a Tennessee resident's

application for the restoration of voting rights on the ground that the applicant was permanently ineligible to register and/or vote under Tenn. Code Ann. § 40-29-204.

This RFP seeks documents regarding denials of restoration to vote applications, which seeks "[v]oting pattern data" and "[r]ace/ethnicity in conviction data."

- RFP 24. Please produce all documents that you contend support the State's interest in permanently disenfranchising Plaintiff and other Permanently Disenfranchised Persons.

This RFP requests documents supporting the State's interest in permanent disenfranchisement, which falls within the category of "[l]egislative history of the 1986 and 2006 versions of the challenged felon disenfranchisement statute(s)."

- Interrogatory 17. For each and every state and local election on or after July 1, 2006, please state the number of Tennessee residents who were ineligible to vote by virtue of a conviction of a felony, broken down by race/ethnicity, gender, county of residence and zip code.

This interrogatory requests information about people ineligible to vote by virtue of a conviction broken down by race/ethnicity, so falls within the categories of "[v]oting pattern data" and "[r]ace/ethnicity in conviction data."

- Interrogatory 19. Please identify the 100 elections since July 1, 2006 across the state and local level, including but not limited to elections for mayor, town/city council, boards of commissioners, sheriffs, clerks of court, and boards of education, with the narrowest margins of victory, broken down by the number of votes for each candidate.

This interrogatory requests information about the outcome of elections which is "[v]oting pattern data."

Accordingly, Defendants' "beyond the scope" objections should be disregarded in their entirety as improper and, in any event, the objections are manifestly not beyond the scope of the Panel's Order. Defendants should be required to supplement their responses and answers to these requests and interrogatories without asserting these objections.

C. Defendants Must Provide Metadata for Documents Produced

Rule 34.02 permits a party to "specify the form or forms in which electronically stored information is to be produced." Plaintiff did so for both sets of RFPs:

> 1. **Production**. You are to produce all requested documents in a manner, with a load file, appropriate markings, or other forms of identification, that enables identification of the source of the document produced, the file in which it is maintained, the individual or entity keeping custody of such file, and the specific request(s) herein to which it is responsive.

[Plf.'s First RFPs, at 1; Plf.'s Second RFPs, at 1]. Many of the documents produced by Defendants in response to Plaintiff's requests have been produced in the form of PDFs with no load files or metadata identifying, for example, custodians or file locations. Other documents produced as native files (*e.g.*, Excel spreadsheets) contain minimal metadata. If Defendants had wished to object to Plaintiff's requested form of productions, they were required to both "stat[e] with specificity the grounds and reasons" for any such objection and to "state the form or forms it intends to use" instead. Tenn. R. Civ. P. 34.02. Defendants neither objected to the requested form of productions nor identified the form it intended to use and, in response to Plaintiff's deficiency letter, simply referred back to their response containing no such objection. [*See* Defs.' Deficiency Letter Response, at 2]. Defendants should, therefore, be required to re-produce all previously provided discovery in the format requested (if applicable) and comply with the requested form of discovery going forward.

D. Plaintiff Has Not Exceeded the Number of Interrogatories

Defendants object to Interrogatories 14 through 22 as "exceed[ing] the number of interrogatories permitted by Rule Twelve, Subsection D of the Local Rules of Practice of the Circuit Court for the Thirtieth Judicial District of Tennessee at Memphis." The local rules permit thirty interrogatories without leave of court, and Defendants do not provide any explanation of

their basis for contending Plaintiff has exceeded the number of interrogatories permitted. This objection lacks the required specificity and should be disregarded.

After objecting, it appears Defendants proceeded to nonetheless respond without identifying whether any responsive information has been withheld, contrary to Rule 33.01. *See* Tenn. R. Civ. P. 33.01 (requiring that an objection "clearly indicate whether responsive information is being withheld on the basis of that objection"); *id.* Advisory Commission Comment ("This amendment should end the confusion that frequently arises when a responding party states several objections, but then still answers the interrogatory by providing information, leaving the requesting party uncertain whether and to what extent relevant and responsive information has been withheld on the basis of the objection.").

Accordingly, the Panel should order Defendants to respond to the interrogatories without this objection.

E. Interrogatory No. 22. Plaintiff's Contention Interrogatory Is Permissible

Interrogatory No. 22 requests Defendants to provide any and all claimed "governmental interest(s) in permanently denying Tennessee residents the right to vote under Tenn. Code. Ann. § 40-29-204" and to provide any documentation supporting or undermining that claimed interest. [Plf.'s Second Interrogatories, No. 22]. Defendants object, contending that the interrogatory "requests Defendants to speculate beyond their personal knowledge as to the intentions of the General Assembly," and object to this interrogatory insofar as it seeks "trial strategy, mental impressions, work product, or privileged attorney-client information." [Defs.' Second Interrogatory Response, at 12]. This interrogatory is a contention interrogatory and contention interrogatories are permissible under the rules. *See* Tenn. R. Civ. P. 33.02 ("An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory

involves an opinion or contention that relates to fact or the application of law to fact[.]"). Defendants should therefore be required to answer this interrogatory.[7]

CONCLUSION

As demonstrated herein, Defendants have largely wasted a year of the Parties' and the Panel's time by slow-walking, obstructing, and otherwise refusing to participate in discovery, in blatant violation of the Tennessee Rules of Civil Procedure. Plaintiff is committed to seeing this case through to trial, but Defendants' tactics of delay and obfuscation are preventing her from moving forward. As such, given the meritless nature of Defendants' objections and the legally baseless and meritless nature of Defendants' positions, the Court should GRANT Plaintiff's motion to compel and order Defendants as follows:

> (1) Each Defendant shall be compelled to produce a list of the searches they have conducted heretofore, including the document repositories searched, the custodians searched, the search terms used, and the time frames applied;
>
> (2) Each Defendant shall be compelled to conduct searches for responsive documents and information in accordance with the Tennessee Rules of Civil Procedure;
>
> (3) Each Defendant shall be compelled to produce responsive documents and data, including appropriate metadata (which will require re-producing documents previously produced);
>
> (4) Each Defendant shall be compelled to produce supplemental discovery responses fully responding to the discovery requests, removing meritless objections, and specifying an answer for each request from each Defendant; and
>
> (5) Each Defendant shall be compelled to fully answer all of Plaintiff's interrogatories under oath.

[7] If Defendants contend that they cannot answer this interrogatory now, they should seek permission from the Court in their opposition to answer this interrogatory at a later date. *See* Tenn. R. Civ. P. 33.02 (stating that "the court may order that [a contention] interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served via email and the Court's electronic filing system on April 29, 2024, as follows:

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