

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS
SENIOR CHAIRMAN OF THE HOUSE SELECT
COMMITTEE ON REDISTRICTING, et al.,

Defendants.

**REPLY IN SUPPORT OF
PLAINTIFFS' MOTION FOR
THE COURT TO ISSUE
DIRECTION TO
LEGISLATIVE DEFENDANTS**

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INTRODUCTION

For all of their overheated rhetoric, Legislative Defendants largely ignore the basic facts. Stephanie Hofeller contacted Plaintiff Common Cause and volunteered to provide materials that she believed could be relevant to this case. Rather than simply take possession of whatever Ms. Hofeller had (and Plaintiffs' counsel knew very little about what she had), Plaintiffs served a lawful subpoena requesting all documents or devices that may contain information related to Dr. Hofeller's work on the challenged maps. Plaintiffs sent a copy of the subpoena to all parties, including Legislative Defendants, on the same day the subpoena was served. Neither Legislative Defendants nor anyone else raised any objection to the subpoena. A month later, Ms. Hofeller produced the devices in response to the subpoena. Legislative Defendants do not cite a single case in which a party or its counsel have been found to have acted improperly by serving a lawful subpoena, giving notice to all parties, and receiving a response after no one objected.

Rather than grapple with these facts, Legislative Defendants lob incendiary accusations of criminal and/or ethical violations against Plaintiffs, their counsel, and Ms. Hofeller. Plaintiffs filed the instant Motion for Direction precisely because Legislative Defendants were making improper demands and accusations to prevent Plaintiffs from using the files, but they have doubled down on the strategy. They loosely toss around terms such as "larceny" and "stolen," and they assert that Plaintiffs' counsel violated a number of ethics rules. Worse, Legislative Defendants make these allegations based on a series of factual assertions that are provably false.

For instance, Legislative Defendants assert that a Common Cause official solicited the files, but the person they name has no affiliation with Common Cause. Legislative Defendants claim that Plaintiffs' counsel knew the substance and scope of materials that Ms. Hofeller possessed and "carefully crafted" the subpoena to furtively obtain privileged materials and files unrelated to North Carolina, but all Plaintiffs' counsel knew was that Ms. Hofeller thought she

had some North Carolina-related materials potentially relevant to this case, mixed in with some unspecified personal information. Legislative Defendants accuse Plaintiffs' counsel of giving legal advice to Ms. Hofeller, but Plaintiffs' counsel did no such thing. As Ms. Hofeller's deposition testimony made clear—and she has now reconfirmed in an affidavit (attached as Exhibit A)—Ms. Hofeller understood that Plaintiffs' counsel were representing Common Cause, not her, and they did not give her any legal guidance or direction. Indeed, in conversations before she produced the devices, Plaintiffs' counsel repeatedly asked Ms. Hofeller whether she had her own attorney, and made clear they were representing the interests of Common Cause.

The list of inaccurate assertions goes on. Legislative Defendants allege that Plaintiffs “withheld” copies of the files from them, but Plaintiffs repeatedly offered to immediately send Legislative Defendants copies of all of the files except for 1,001 specified documents that on their face contained medical, tax, or other sensitive personal information. Legislative Defendants rejected all of those offers. Legislative Defendants also claim that Plaintiffs failed to disclose the scope of materials that were produced, but Plaintiffs explicitly disclosed this information to both the Court and Legislative Defendants months ago. Plaintiffs even voluntarily sent Legislative Defendants an index listing the names of more than 75,000 files on the devices, all the way back on April 9.

Plaintiffs and their counsel from Poyner Spruill, Arnold & Porter, and Perkins Coie have acted ethically, transparently, and otherwise appropriately at all times with respect to the Hofeller files, and will continue to do so.

At bottom, all of Legislative Defendants' accusations, their improper attempt to designate all of the Hofeller files as “Highly Confidential” without any plausible basis in the Consent Protective Order, and the various forms of relief they now seek are in service of an effort to

conceal evidence that is highly relevant to this case and of undeniable public import in other cases. As Plaintiffs explained in their opening motion, if Legislative Defendants have evidentiary objections to the introduction of specific files at trial, they can assert those objections pursuant to the North Carolina Rules of Evidence. But Legislative Defendants' misstatements of basic facts about the conduct of Plaintiffs, their counsel, and Ms. Hofeller—and their unfounded accusations based on those misstatements—should stop.

LEGISLATIVE DEFENDANTS' FACTUAL MISSTATEMENTS

Legislative Defendants' recitation of the relevant facts is wrong at every turn. And their factual errors are no small matter. Legislative Defendants' multiple misstatements form the central basis for their accusations of misconduct against Plaintiffs, their counsel, and Ms. Hofeller. The following corrects Legislative Defendants' most significant false factual contentions.

- **Legislative Defendants' Assertion 1**: "The record is contradictory as to how" Ms. Hofeller "began discussing . . . the documents with Common Cause." Resp. 12.

The record contains no contradiction as to how Ms. Hofeller's discussions with Common Cause began. Ms. Hofeller testified that she contacted Bob Phillips at Common Cause in October or November 2018 to request a referral for an attorney to represent her mother in an incompetency proceeding, that Mr. Phillips directed Ms. Hofeller to Common Cause's Jane Pinsky, and that Ms. Hofeller later told Ms. Pinsky that she had and wanted to provide potentially relevant materials after reading a news article noting speculation by David Daley that Dr. Hofeller's work could be on a hard drive somewhere. *See* Ex. B at 31:7-38:9; 58:9-59:23.

In an effort to cast doubt on this testimony, Legislative Defendants suggest that David Daley, whom Legislative Defendants describe as "a senior fellow at Common Cause," solicited the devices from Ms. Hofeller. Resp. 12-13. Legislative Defendants suggest that Ms. Hofeller

either contacted Common Cause about the documents after reading an article by its supposed “senior fellow” in 2018, or after Ms. Hofeller purportedly attended a Common Cause conference in North Carolina in January 2019. *Id.* According to Legislative Defendants, Ms. Hofeller may have attended the January 2019 conference, seen a speech by Mr. Daley there mentioning the possibility of documents on Dr. Hofeller’s computer, and approached Common Cause “afterward, stating ‘are you interested in this? I need legal help.’” *Id.* at 13.

None of this is true. As Mr. Daley recently explained in a statement responding to Legislative Defendants’ brief, he has *never* held any title at Common Cause and is instead a “senior fellow” at FairVote, a different organization. Ex. C ¶¶ 1-5.¹ Mr. Daley further stated that he previously offered a reporter only his “casual speculation,” “prior to the publication of Ms. Hofeller’s deposition,” that she may have seen him speak at the Common Cause conference, and that he learned “after the release of Ms. Hofeller’s deposition” that she instead read his remarks several months earlier in an article “in the Raleigh News and Observer.” *Id.* ¶ 6. Also, Ms. Hofeller did not attend the Common Cause conference. Ex. A ¶ 26. More importantly, nobody from Common Cause ever solicited anything from Ms. Hofeller. She contacted Common Cause, mentioned that she had potentially relevant materials that had belonged to her father, and offered to provide them.

- **Legislative Defendants’ Assertion 2:** Plaintiffs’ counsel had “full knowledge” that the devices “contain[ed] privileged information,” “personal health information,” and “non-North Carolina documents” from Dr. Hofeller’s work in other states. Resp. 14, 17, 46.

Legislative Defendants assert throughout their brief that Plaintiffs’ counsel had detailed advance knowledge of the contents of the storage devices before issuing the subpoena to Ms.

¹ It appears that Legislative Defendants misread a notation on Common Cause’s website that listed Mr. Daley as a speaker at a Common Cause event. The notation identified him as a “Senior Fellow, FairVote.” This notation clearly identified Mr. Daley as a Senior Fellow at FairVote, not at Common Cause. *See* Ex. C ¶ 2.

Hofeller. *See, e.g.*, Resp. 14, 17, 46-47. That is false. As Ms. Hofeller's affidavit confirms, "[b]efore responding to the subpoena, [she] never informed the attorneys for Common Cause about the scope of material on the drives, about the specific content of any files on them, or that the drives contained information about states other than North Carolina." Ex. A ¶ 22. Until after the devices arrived via FedEx, Plaintiffs' counsel understood only that Ms. Hofeller had a device or devices with information about Dr. Hofeller's work on North Carolina redistricting along with some unspecified personal data. Plaintiffs' counsel did not know the specific nature of any personal information, did not know that the devices contained medical and tax information, did not know that the devices contained Dr. Hofeller's work from states other than North Carolina, and did not know the extent to which the devices even contained materials relating to North Carolina redistricting.

Ms. Hofeller's deposition testimony confirms this point. When asked by Legislative Defendants' counsel "what [she] said" to Plaintiffs' counsel, Ms. Hofeller testified: "I said that I had material that might be relevant to the case." Ex. B at 110:25-111:4. When asked the follow-up question whether she had "explain[ed] in any further detail what material [she] had," Ms. Hofeller replied: "Vague detail, external storage devices . . . -- I don't think I specifically said backups. I just said external storage devices." *Id.* at 111:5-11. Later, when asked whether she had given Plaintiffs' counsel "any detailed information about . . . what the materials were on those hard drives and thumb drives" before sending them in response to the subpoena, Ms. Hofeller testified: "I did not get very specific, no." *Id.* at 114:2-7. She elaborated as follows: "That is how I'm accustomed to doing things with attorneys is that attorneys decide what's relevant and what isn't and that if there's a chance that it might be relevant to a matter that that attorney is working on, that I would say, *this might be relevant to the matter that you're working*

on. So that was pretty much what I said. *I don't recall talking about specific files.*" *Id.* at 114:7-16 (emphases added). Ms. Hofeller further stated that she felt "it would be most proper to say, *this might be relevant, and then to not speculate further.*" *Id.* at 114:17-19 (emphasis added).

When asked by Legislative Defendants' counsel whether she had told Plaintiffs' counsel that the devices contained her father's tax information, Ms. Hofeller testified that she "did not discuss specifically taxes," only generally that "personal and work" materials were "mingled." *Id.* at 127:15-128:13. Ms. Hofeller's testimony further makes clear that the discussion centered around what was relevant to this case: Plaintiffs' counsel "wanted to make sure that it was relevant really, I guess, would be the best word, that it was relevant. And before they even wanted to go into any more of the nuts and bolts, they wanted to make sure that this was even a relevant matter because I think the impression being that they didn't want to discuss a lot with me that wasn't specifically relevant to the case." *Id.* at 123:23-124:18. Ms. Hofeller never testified that Plaintiffs' counsel knew the nature of any personal data or that the devices contained information related to work outside North Carolina.

- **Legislative Defendants' Assertion 3**: Plaintiffs' counsel "gave legal advice" to Ms. Hofeller regarding "what information she should hand over and how." Resp. 38; *see also id.* at 3-4, 13-14, 38-41.

Plaintiffs' counsel gave no legal advice to Ms. Hofeller, either about responding to the subpoena or otherwise. As Ms. Hofeller confirms in her affidavit, she "never understood Attorney Speas or Attorney Mackie to have been giving me legal advice or acting as my attorneys," and that she "was never given any explicit direction, legal advice or instructions about what to send in response to the subpoena [she] received in this matter." Ex. A ¶¶ 17, 19. Ms. Hofeller further attests that "[i]n every conversation [she] had with Attorney Speas and/or Mackie, [she] understood they represented Common Cause, one of the plaintiffs in this matter,

and [she] also understood they were acting exclusively in the interest of their client.” *Id.* ¶ 18. Elaborating further, Ms. Hofeller attests that “[i]n every conversation [she] had with [Mr.] Speas and/or [Ms.] Mackie prior to late April, they asked if [she] was represented by counsel in this matter, and [she] told them [she] was not.” *Id.* ¶ 14. Ms. Hofeller’s affidavit also confirms that she “ha[s] always understood that [she] had the right, and [she] ha[s] always had the ability, to seek counsel to represent [her] in regard to this matter, and, ultimately, [she] did not choose to retain an attorney in this matter until late April or early May.” *Id.* ¶ 15.

All of this just reconfirms what Ms. Hofeller said at her deposition—namely that “it was clear to [her] at least that -- that Eddie and Caroline were the attorneys that -- that were -- at Common Cause that were working on this matter.” Ex. B at 125:18-23. This makes sense, as Ms. Hofeller was directed to Plaintiffs’ counsel specifically in reference to their representation of Common Cause. *See, e.g., id.* at 38:10-39:5.

Nothing Plaintiffs’ counsel said to Ms. Hofeller could be interpreted as giving her “legal advice,” or suggesting that Plaintiffs’ counsel were representing her as opposed to Common Cause. Ms. Hofeller testified that there was a “collective attempt to maintain accuracy, maintain transparency.” Ex. B at 66:10-11. She further testified that she understood “it would be best recognized in court as . . . a good chain of custody, transparency” if she did not pick and choose files or remove some files from the devices in responding to the subpoena. *Id.* at 67:7-18. In other words, Ms. Hofeller’s understanding was that it would be helpful *to Common Cause*—“in court” in this case—for her to not pick and choose which files to send from the devices. *Id.* That is consistent with Ms. Hofeller’s knowledge and understanding that Plaintiffs’ counsel were representing Common Cause and only Common Cause at all times. Ex. A ¶¶ 14-19.

Nowhere did Ms. Hofeller suggest in her testimony that she believed Plaintiffs' counsel to be giving her personal legal advice. To the contrary, when asked by Legislative Defendants' counsel, "Did Mr. Speas or Ms. Mackie ever tell you that it would be best for you to turn over the entirety," Ms. Hofeller answered no—"They didn't say that it would be best." Ex. B at 115:8-11 (emphasis added). If Legislative Defendants had asked Ms. Hofeller at deposition whether she ever understood Plaintiffs' counsel to be giving her legal advice, she would have told them no, but they did not ask.

In all their communications with Ms. Hofeller, Plaintiffs' counsel were transparent, professional, and in no way pressured Ms. Hofeller to take any action. Ms. Hofeller testified that Plaintiffs' counsel "were very polite and . . . really wanted to make sure that [she] didn't feel that they were pulling this out of [her] or that [she] was on the spot." Ex. B at 134:7-11; *see also id.* at 134:13-17 (Plaintiffs' counsel were "careful, you know, just polite"). Ms. Hofeller further testified that she "got the impression that [Plaintiffs' counsel] really wanted to make sure that -- that . . . this was a voluntary" choice, *id.* at 124:2-5, and that "they didn't want to make [her] feel like [she] was under any pressure," *id.* at 134:15-16. Ms. Hofeller confirms in her affidavit that she "do[es] not feel now, nor do[es] [she], in retrospect, nor do[es] [she], at any time in the past, feel coerced, mislead, misinformed or pressured in any way whatsoever." Ex. A ¶ 13.

As for more recent communications, Ms. Hofeller attests in her affidavit that, "[s]ince [she] retained counsel in this matter, [she] ha[s] not had any conversations with any attorney for any of the parties to this lawsuit without [her] attorney being present, either in person or telephonically." Ex. A ¶ 16. As this all makes clear, Plaintiffs' counsel gave no legal advice to Ms. Hofeller, and she understood at all times that they were representing Plaintiffs, not her.

- **Legislative Defendants’ Assertion 4**: Ms. Hofeller “agreed to turn over all of the documents in her possession” only because Plaintiffs’ counsel told her that solely North Carolina redistricting materials would be reviewed. Resp. 14-15.

Legislative Defendants’ brief repeatedly implies that Plaintiffs’ counsel tricked Ms. Hofeller into sending the full storage devices by allegedly telling her that only files related to North Carolina redistricting would be reviewed. *E.g.*, Resp. 13-15, 18. As stated, Plaintiffs’ counsel had no idea at the time that the files included documents related to Dr. Hofeller’s work in other states. In this context, any statements by Plaintiffs’ counsel about the scope of review were merely in reference to not reviewing personal files that may have been on the devices (and even then, Plaintiffs’ counsel did not know the nature of any such personal files).

Further, Ms. Hofeller testified that she wished to provide the storage devices to Plaintiffs because of *her* desire to preserve a “historical” record of all of her father’s redistricting work. Ex. B at 42:21-25. Ms. Hofeller testified: “I knew that if I presented them this way that they would be preserved, that they -- their integrity would be preserved and everything there, including my files, including other matters completely unrelated to this, that those -- that that would be a snapshot in time.” *Id.* at 43:4-10.

Ms. Hofeller also testified that she knew—and advised her mother before responding to the subpoena—that any of the files could be used once they were turned over. Ms. Hofeller “assured her [mother] . . . that she should be aware that once you -- and, again, this is something my father taught me. Once you let go of it, you don’t have control of it anymore so you can’t be guaranteed what will and won’t be disclosed, so it’s something you should be prepared for when you are involved with discovery.” *Id.* at 40:1-15. Beyond that, before submitting the census-related files in the census litigation, Plaintiffs’ counsel confirmed with Ms. Hofeller and her counsel, both orally and in writing, that Ms. Hofeller “approves of [Plaintiffs’ counsel]

submitting the census-related documents we discussed, which were on the hard drives she produced in response to our subpoena, in the separate census litigation in federal court.” Ex. D; *see also* Ex. A ¶ 24 (same). Ms. Hofeller has now further confirmed that she “ha[s] no objection to the attorneys involved in this matter sharing non-personal materials from the drives with parties in other lawsuits, so long as [she is] informed ahead of time so that [she] understand[s] where this information is being used.” Ex. A ¶ 25.

- **Legislative Defendants’ Assertion 5**: Plaintiffs “carefully crafted” the subpoena to Ms. Hofeller “to avoid signaling the scope of documents Ms. [Hofeller] intended to hand over.” Resp. 15-16.

Legislative Defendants assert that Plaintiffs “carefully worded” the subpoena to Ms. Hofeller to somehow mask from Legislative Defendants “and third parties” that “Plaintiffs expected non-North Carolina documents, that they knew were beyond the scope of discovery, to be produced in response to the subpoena.” Resp. 16-17. That, too, is false.

Again, Plaintiffs’ counsel did not know the scope of materials that were on the devices or what Ms. Hofeller would produce. Plaintiffs’ counsel did not know that the devices would contain “non-North Carolina documents” related to Dr. Hofeller’s work in other states. Legislative Defendants cite no evidence to show otherwise, and their unsubstantiated allegations are false.

While Legislative Defendants assert that they were “unaware that Ms. [Hofeller] had any documents” of substance, Resp. 15, Plaintiffs also issued identically-worded subpoenas to Dr. Hofeller’s widow and the Estate of Dr. Hofeller. Exs. Q, R. Legislative Defendants received notice of these subpoenas and did not object to any of them, or to the subpoena to Stephanie Hofeller. Legislative Defendants thus knew that Plaintiffs were attempting to obtain “storage devices” with Dr. Hofeller’s work on the challenged plans, but did nothing.

- **Legislative Defendants’ Assertion 6:** Ms. Hofeller’s mother “lack[ed] competency” to give the devices to her daughter and consent to her daughter producing them to Plaintiffs in response to the subpoena. Resp. 4.

In a series of unfortunate attacks on Ms. Hofeller’s mother, Legislative Defendants assert, among other things, that she “lack[ed] competency” when she gave the devices to her daughter, and that they have “serious doubts” about her “capacity.” Resp. 3-4. Legislative Defendants then discuss Ms. Hofeller’s mother’s private and highly personal medical information. *See id.* at 9-11. These challenges to the competency of Ms. Hofeller’s mother form the primary basis for Legislative Defendants’ accusation that the devices were “stolen” by Ms. Hofeller. *Id.* at 32, 44, 48. For Legislative Defendants to include this information and these characterizations in a filing that they simultaneously posted online and distributed to the media is troubling. It is all the more troubling because the characterizations are false.

To be clear: Ms. Hofeller’s mother has never been declared incompetent by any court. And the incompetency proceeding relied on by Legislative Defendants did not even exist at any time relevant here. Ms. Hofeller testified that her mother gave her the devices on October 11, 2018. Ex. B at 52:6-10. It was only weeks *later*, on November 6, 2018, that an interim guardian ad litem was appointed for Ms. Hofeller’s mother in a then-*ex parte* proceeding, in response to a Petition for Adjudication of Incompetence that had been filed one week earlier. On February 7, 2019, the incompetency petition was dismissed for failure to prosecute—without any finding of incompetency—after the parties reached a settlement. *See In re The Matter of Kathleen H. Hofeller*, 18 SP 2634 (N.C. Super. Feb. 7, 2019). That settlement, which is signed by Ms. Hofeller’s mother herself (further foreclosing any notion that she is incompetent), precludes the parties from bringing future incompetency proceedings against Ms. Hofeller’s mother. Plaintiffs issued their subpoena to Stephanie Hofeller on February 13, 2019—*after* the incompetency

proceeding had been dismissed—and Ms. Hofeller’s mother consented to her daughter producing the devices in response to the subpoena thereafter. Ex. B at 9:14-10:18.

In sum, the incompetency proceeding did not begin until after the date when Ms. Hofeller obtained possession of the devices with her mother’s permission, and the incompetency proceeding concluded (with no finding of incompetency) before the date when Ms. Hofeller sent the devices to Plaintiffs in response to their subpoena, again with her mother’s permission, *id.* at 39:21-41:8. Moreover, although Legislative Defendants recite inflammatory *ex parte* allegations leveled against Ms. Hofeller in the incompetency proceeding, Resp. 3, 9-11, 33-36, sometimes suggesting that the allegations are “facts,” *id.* at 23, these allegations have never been found to be true by any court.

Legislative Defendants’ suggestion that Ms. Hofeller misled her mother is a gross mischaracterization of the record. Legislative Defendants state that Ms. Hofeller asked her mother “if she could take the drives because she was looking for pictures and other documents of hers that she thought might be on the drives,” Resp. 11, but they *omit* that Ms. Hofeller *also* told her mother that the devices contained Dr. Hofeller’s work-related files, and that those work files would be provided to Plaintiffs in response to the subpoena. Specifically, when asked by Legislative Defendants’ counsel whether she had “a specific conversation with [her] mother to tell her that [she] identified business records of [her] father’s on” the devices, Ms. Hofeller testified: “All of those points were at some point mentioned. My mother was aware of the fact that . . . the subpoena for these hard drives was, in fact, for *work-related files only*. So not only was it clear to her that there were *work-related files*, but it was clear to her that the lawyers that would be looking at it on either side would not be looking at anything other than *my father’s work-related files*.” Ex. B. at 56:22-57:18 (emphases added); *see id.* at 59:13-18 (“Q. At what

point in time did you discuss with your mother the possibility of turning over your father's business records to Common Cause or to Arnold & Porter? A. The subpoena. That -- that would be when we specifically discussed that.”).

- **Legislative Defendants' Assertion 7:** Plaintiffs “declined to provide copies” of the Hofeller files to other parties. Resp. 17.

Legislative Defendants' assertion that “Plaintiffs' counsel withheld the documents from the other litigants,” Resp. 5, is demonstrably false. Plaintiffs made diligent efforts, in line with Rule 45(d1), to provide copies of the Hofeller files to all Defendants as expeditiously as possible.

On March 20, Plaintiffs timely notified all Defendants of Plaintiffs' receipt of materials from Ms. Hofeller in response to the subpoena. Ex. E at 14 (3/20/19 email from S. Jones). Six days later, on March 26, Legislative Defendants' counsel requested copies of the materials, and Plaintiffs promptly notified them that the materials, which “were all electronic media, namely four external hard drives and 18 thumb drives,” were being processed by Plaintiffs' vendor. *Id.* at 13-14 (3/26/19 emails from P. Strach and S. Jones). One day later, on March 27, Plaintiffs told all Defendants that, based on file and folder names, it was apparent that the devices included medical, tax, and other sensitive personal information of the Hofeller family. *Id.* at 11-12 (3/27/19 email from E. Theodore). Plaintiffs offered to have their vendor use keyword searches to “pull out these personal files *and then make a copy of everything that remains, and provide you with that copy.*” *Id.* at 11 (emphasis added). After waiting five days to respond, Legislative Defendants rejected this offer. *Id.* at 8-9 (4/1/19 email from P. Strach).

In hopes of reaching an agreement without court intervention, Plaintiffs offered to tell Defendants the exact search terms that would be used to identify sensitive personal files, and even to have Defendants' vendors in the room with Plaintiffs' vendor to observe the filtering. *Id.* at 2, 8 (4/2/19 email from S. Jones & 4/4/19 email from E. Theodore). Legislative

Defendants and Intervenor Defendants refused these offers too, and Plaintiffs explained that they would file a motion for clarification. *Id.* at 8 (4/2/19 email from S. Jones). Plaintiffs then advised: “We would like to make the motion swiftly to facilitate the provision of this material to you . . . as quickly as possible; we would have made our motion last week . . . if we had received your response at that time.” *Id.* at 6-7 (4/3/19 email from S. Jones).

On April 11, while Plaintiffs’ motion for clarification was pending, Plaintiffs sent Legislative Defendants a list of the exact 1,001 files that Plaintiffs proposed to filter out, along with the keywords used to generate that list, and asked whether Legislative Defendants would consent to filtering just these specific files given that all of them were obviously sensitive and personal in light of their file names. Ex. F at 1-2, 4 (4/11/19 and 4/12/19 emails from S. Jones). Legislative Defendants declined this offer as well. Then, on April 18, Plaintiffs emailed Legislative Defendants “to again give [them] the opportunity to receive the materials that we do not propose to filter.” *Id.* at 1 (4/18/19 email from S. Jones). Plaintiffs indicated that, while the Court was evaluating whether to order Plaintiffs to turn over the 1,001 personal files, Plaintiffs would immediately send Legislative Defendants copies of all of the other files (and Plaintiffs offered to absorb the costs of doing so if the Court later declined to allow for filtering). *Id.* Legislative Defendants never responded to that offer. When asked by Judge Hinton at this Court’s April 30 hearing why they did not take this offer, Legislative Defendants’ response was that their “position” was “that [they] should get all of it.” Ex. G at 15.

In light of these facts, Legislative Defendants’ assertions that Plaintiffs intentionally “withheld the documents from the other litigants,” Resp. 5, do not withstand scrutiny. Plaintiffs’ counsel repeatedly offered to provide all the non-sensitive files to the other litigants. At any time on or after March 27, Legislative Defendants could have agreed to accept copies of all of the

files except for the small number of sensitive personal files that were in dispute, while still litigating access to those small number of files. Legislative Defendants chose not to do so.

- **Legislative Defendants’ Assertion 8:** Plaintiffs failed to “notify the Court or the Legislative Defendants that documents related to other litigation—past and present—were in the disclosure or that North Carolina documents were only a sliver of the material produced.” Resp. 18.

Legislative Defendants’ charge that Plaintiffs failed to disclose to Defendants and the Court the scope of materials produced in response to the subpoena, Resp. 15, 18, 19, is also false. On April 9, Plaintiffs voluntarily sent all Defendants a searchable index of more than 75,000 file names and file paths contained on the devices. *See* Ex. E at 1 (4/9/19 email from S. Jones). This index clearly showed the scope of materials on the devices, including that there are many files from states other than North Carolina. Indeed, in an email four days later, Legislative Defendants’ counsel noted “*the many files on the index . . . dealing with issues in other states.*” Ex. F at 3 (4/12/19 from P. Strach) (emphasis added).²

Plaintiffs disclosed all of this to the Court. In an April 12 reply brief, Plaintiffs told the Court that Legislative Defendants were taking the position that files on the devices relating to “other states” were not responsive to the subpoena. 4/12/19 Pls. Reply Br. 5 n.2. And at the April 30 hearing, Plaintiffs informed this Court that Ms. Hofeller’s production consisted of “four hard drives and 18 thumb drives” containing over “75,000 files.” Ex. G at 5-6. The record thus conclusively refutes Legislative Defendants’ allegations that Plaintiffs failed to disclose to Defendants and the Court information about the nature or scope of the production.

² On May 2, 2019, Legislative Defendants requested that Plaintiffs provide an “excel version of the PDF ‘index’ previously produced to [them] with columns indicating the file size, and file extension,” as well as clarification as to information on the index. Ex. H at 1 (5/2/19 email from P. Strach). Plaintiffs provided an Excel file with all of this information even though they were under no obligation at all to do so. Ex. I at 1 (5/2/19 email from D. Jacobson).

ARGUMENT

I. Plaintiffs' Counsel Acted Ethically and Otherwise Appropriately at All Times

Legislative Defendants assert that Plaintiffs' counsel "appear to have violated the rules of ethics"—namely North Carolina Rules of Professional Conduct 4.4(a), 4.3(a), 4.3(b), and 3.3.1(a)(1). Resp. 32. That is not so. Plaintiffs' counsel from Poyner Spruill, Arnold & Porter, and Perkins Coie have acted ethically and otherwise appropriately at all times.

A. Plaintiffs' Counsel Obtained the Hofeller Files Through a Lawful Subpoena

Rule 4.4, titled "Respect for the Rights of Third Persons," provides that "a lawyer shall not . . . use methods of obtaining evidence that violate the legal rights of" a "third person." N.C. R. Prof. Conduct 4.4(a). Legislative Defendants suggest that Plaintiffs' counsel violated Rule 4.4(a) by "wrongfully obtaining the property or confidential information of an opposing party." Resp. 42 (quoting *Glynn v. EDO Corp.*, 2010 WL 3294347, at *3 (D. Md. Aug. 20, 2010)).

Far from "wrongfully obtaining" the files, Plaintiffs properly obtained them through lawful court process. When Ms. Hofeller approached Common Cause and offered to provide potentially relevant materials for use in this case, rather than simply take possession of them, Plaintiffs' counsel issued a subpoena with same-day notice to all parties—per Rule 45(b)(2)—to ensure that all parties were aware that Plaintiffs were seeking materials from Ms. Hofeller and had an opportunity to object. Legislative Defendants never raised any objection to the subpoena, despite having ample time to do so: Ms. Hofeller did not respond to the subpoena until a month after Legislative Defendants received notice of it, weeks after the return date listed in the subpoena. Legislative Defendants do not cite a single case—not one—in which a lawyer has been found to have acted improperly by obtaining information through a lawful subpoena with proper notice to all parties in the case.

1. It is not improper to serve a lawful subpoena with notice to all parties

In all of the cases cited by Legislative Defendants (except one addressed below), lawyers improperly obtained information entirely outside the discovery process. For instance, in *Glynn*, the district court imposed monetary sanctions where the plaintiff and his counsel “surreptitiously” obtained the defendant’s “internal” company documents “*outside of the normal discovery channels*”—namely by having the defendant’s “disgruntled employee” “tunnel” the documents to them before the litigation began. 2010 WL 3294347, at *5 (emphasis added). Similarly, in *Xyngular v. Schenkel*, 890 F.3d 868 (10th Cir. 2018), the Tenth Circuit affirmed the imposition of case-terminating sanctions based on the plaintiff’s unlawful “pre-litigation conduct,” where the plaintiff had “willfully, in bad faith, and with fault” “encouraged” an employee of the defendant’s vendor to take the defendant’s documents without authorization and give them to the plaintiff “in anticipation of the litigation.” *Id.* at 871-74. In *Oliver v. Bynum*, 163 N.C. App. 166, 592 S.E.2d 707 (2004), the Court of Appeals affirmed the disqualification of plaintiffs’ lawyer who had acquired a defendant’s confidential information by instructing another client to surreptitiously tape conversations with the defendant. *Id.* at 167-71. Other cases cited by Legislative Defendants likewise involved improper acquisition of information entirely outside the discovery process, rather than information obtained through lawful court process.

The one case cited by Legislative Defendants involving a subpoena is readily distinguishable. In *Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004) (cited at Resp. 48), the plaintiff’s lawyer issued a “false,” “deceptive,” and “patently unlawful” subpoena to the defendant-company’s Internet Service Provider (ISP) seeking “[a]ll copies of e-mails sent or received by anyone’ at [the company], with no limitation as to time or scope.” *Id.* at 1072, 1074. The plaintiff’s lawyer did not give the defendants notice of the subpoena at that time. *See* Pls.-Appellants’ Opening Br., *Theofel*, No. 02-15742, 2002 WL 32163299, at *10 (9th Cir. July 16,

2002) (hereinafter “*Theofel Br.*”) (drawing from magistrate judge’s opinion). Roughly a week later, the ISP provided a “sample” of the defendant’s emails to the plaintiff’s lawyer. *Theofel*, 359 F.3d at 1071; see *Theofel Br.*, 2002 WL 32163299, at *8. Only at this point did the defendant “first learn that the subpoena had issued,” and even then the defendant was not informed that the ISP had provided an initial production to the plaintiff’s lawyer. *Theofel Br.*, 2002 WL 32163299, at *10 (quoting magistrate judge’s opinion). The defendant did not learn of the ISP’s initial production “until two weeks after the fact.” *Id.* (quoting same).

This case could not be more different from *Theofel*. Here, Plaintiffs fully complied with Rule 45. Legislative Defendants received a copy of the subpoena on the same day it was issued in compliance with Rule 45(b)(2), Ms. Hofeller did not produce anything until a month later, and Plaintiffs timely informed Legislative Defendants of receipt of Ms. Hofeller’s production in compliance with Rule 45(d1).

In an effort to undermine the validity of the subpoena, Legislative Defendants contend that Plaintiffs’ counsel worded the subpoena, “deceptively” and “in bad faith,” to seek information to which Plaintiffs were not entitled. Resp. 48. Legislative Defendants similarly assert that Plaintiffs’ counsel “knew they were seizing” “highly confidential” materials “from legislatures and Republican Party-affiliated groups around the United States.” Resp. 37. But as described above, Plaintiffs and their counsel knew virtually nothing about what was on the device or devices Ms. Hofeller possessed. The only thing Ms. Hofeller told Plaintiffs and their counsel is that she had a device or devices containing information that may be “relevant” to this lawsuit, along with unspecified personal files. Ex. B at 110:25-111:11, 114:2-19. That is why Plaintiffs’ subpoena asked for “storage devices” with information related to Dr. Hofeller’s work on the challenged maps. Before receiving the response to the subpoena, Plaintiffs and their

counsel had no knowledge that the devices contained information about Dr. Hofeller's work outside North Carolina.

2. Ms. Hofeller had lawful possession of the devices

Despite repeatedly tossing around terms such as “larceny” and “stolen,” *see, e.g.*, Resp. 4, 32, 34, 38, 44, 45 n.24, 48, Legislative Defendants cite no legal or factual support for the proposition that Ms. Hofeller lacked lawful possession of the storage devices. Dr. Hofeller and Ms. Hofeller's mother appear to have *both* used the storage devices to make copies of their files. The devices contain a mix of personal and work-related files from both Dr. Hofeller and his wife. Ms. Hofeller confirmed at her deposition that the devices belonged to both her father and her mother. Ex. B at 12:12-17. Even as to Dr. Hofeller's work-related files, the storage devices reflect Dr. Hofeller's personal copies of those documents.

The devices themselves thus became the property of Ms. Hofeller's mother upon his death,³ and Legislative Defendants do not cite³ any case or other legal authority to the contrary. They provide no legal support for the notion that someone other than Dr. Hofeller's widow had legal ownership of the devices at the time she gave them to her daughter. Legislative Defendants do not even say who they think did have legal ownership of the devices, if not Dr. Hofeller's widow. Legislative Defendants provide no legal authority whatsoever for the notion that Ms. Hofeller's obtaining the devices from her mother amounted to *criminal* conduct. *Cf. Aldmyr Sys., Inc. v. Friedman*, 215 F. Supp. 3d 440, 456 (D. Md. 2016) (“The fact that a wife may come across a husband's business (even allegedly ‘private’) papers and materials in the marital home and either take possession of or copy them is hardly a basis for a claim of theft of trade secrets or copyright infringement.”). Legislative Defendants instead suggest that Ms. Hofeller's mother

³ As previously noted, it is Plaintiffs' understanding that no estate was opened for Dr. Hofeller at any relevant time.

did not have legal capacity to consent to her daughter taking the devices, but that is not true for the reasons already explained. Dr. Hofeller's widow was legally competent and the incompetency proceeding did not even exist when she gave the devices to her daughter and when she subsequently consented to her daughter producing them in response to the subpoena.

3. The subpoena was proper regardless of ownership of the devices

Although Ms. Hofeller had lawful possession of the devices for the reasons set forth above, it does not matter, for present purposes, how Ms. Hofeller obtained the devices and whether other entities had legal property interests in the files on them at the time Plaintiffs issued the subpoena. As Judge Learned Hand explained over a century ago, "a full possessor of [] documents is always subject to subpoena, whether his possession is lawful or unlawful, and regardless of ownership." *In re Grant*, 198 F. 708, 709 (S.D.N.Y. 1912), *aff'd* 227 U.S. 74 (1913). The U.S. Supreme Court affirmed this principle several years later, *see Burdeau v. McDowell*, 256 U.S. 465 (1921), and courts have applied it ever since.

Thus, Legislative Defendants' "assertion that [Plaintiffs] should have known that any documents would be property of [another entity] is of no moment." *SLM v. Clinton Pub. Sch. Dist.*, 677 So. 2d 737, 740 (Miss. 1996). If a third party is "in possession of the documents serving them is not improper, because a subpoena duces tecum can be enforced against a person in possession of records belonging to others." *Id.*; *accord, e.g., United States v. Re*, 313 F. Supp. 442, 449 (S.D.N.Y. 1970) ("[S]ervice of a subpoena duces tecum on a person in possession of records belonging to another is proper."); *Mattie T. v. Johnston*, 74 F.R.D. 498, 502 (N.D. Miss. 1976) ("A person seeking access to records through the issuance of a subpoena often has the subpoena served on the individual who has possession of the documents and the court has found no requirement that the subpoena be served on the person who owns the documents."); *see also United States v. Foley*, 598 F.2d 1323, 1337 (4th Cir. 1979).

Ms. Hofeller was in possession of the storage devices at issue here, and Plaintiffs had every right to serve her with a subpoena seeking the materials she possessed.

4. In all events, Legislative Defendants' privilege claims are invalid

In a section of their brief titled "Violation of Privilege," Legislative Defendants assert that Plaintiffs "now have in their possession . . . 1,300 emails containing another 3,600 North Carolina-related documents that on their face assert some type of privilege claim," and Legislative Defendants allege that Plaintiffs obtained the devices from Ms. Hofeller "with full knowledge that they would contain privileged information." Resp. 45-46. Legislative Defendants also suggest that Plaintiffs' counsel may have reviewed purportedly privileged materials, and if so, they argue that "[d]isqualification of some or all of Plaintiffs' attorneys may . . . be appropriate." *Id.* at 52. Legislative Defendants offer no substantiation for any of these assertions or insinuations, and the latter two are flatly false.

For one, as explained, Plaintiffs' counsel did not know the substance or scope of the files that Ms. Hofeller had until after receiving the devices in response to the subpoena. To the extent Legislative Defendants contend that any devices that belonged to Dr. Hofeller would necessarily contain privileged materials (a dubious claim), that was all the more reason for Legislative Defendants to object to the subpoena to Ms. Hofeller when Plaintiffs issued it and provided same-day notice to Legislative Defendants. As stated, it was not just Ms. Hofeller to whom Plaintiffs issued a subpoena: Plaintiffs also issued subpoenas seeking Dr. Hofeller's materials to Ms. Hofeller's mother and the Estate of Dr. Hofeller. Exs. Q, R. Legislative Defendants did not raise any objection to any of those subpoenas. The suggestion that Plaintiffs were somehow furtively working to acquire privileged information is not grounded in reality.

More importantly, since Plaintiffs acquired the Hofeller files, Plaintiffs have acted at all times acted transparently and prudently with respect to possible privilege issues, and have

avoided reviewing materials that conceivably could be subject to a legitimate privilege claim by Legislative Defendants or anyone else.

Plaintiffs' counsel have also offered to meet and confer with Legislative Defendants about any files they consider privileged—even though Legislative Defendants have waived any privilege they may have held. In their June 5 letter, Plaintiffs' counsel invited Legislative Defendants to “identify each . . . file” they consider privileged, “specify the privilege that [they] believe applies, and provide appropriate legal and factual support for [their] contention that the file is privileged.” Ex. J at 13. Three weeks have now passed since Plaintiffs made this offer, and Legislative Defendants have not responded. Legislative Defendants assert in their filing that they have identified “1,300 emails” that are purportedly privileged, but they have not provided the list of these e-mails to Plaintiffs. The only specific documents that Legislative Defendants have identified as possibly privileged are the five files listed in their May 31 letter, which Plaintiffs already made clear they have no intention of reviewing. *Id.* at 3. Even now, despite Legislative Defendants' repeated waivers of any privilege, Plaintiffs remain willing to confer with Legislative Defendants if they identify specific documents over which they legitimately believe a privilege applies.

Plaintiffs have made the same offer to engage with other entities represented by Legislative Defendants' counsel who have sent demand letters to Plaintiffs over the last two months. For instance, while Legislative Defendants note in their recent filing that “Plaintiffs are represented by the law firm of Perkins Coie, which is adverse to the Virginia House of Delegates in *Bethune-Hill v. Va. State Board of Elections*,” Resp. 45 n.26, Legislative Defendants fail to disclose that their own counsel sent a demand letter to Plaintiffs on behalf of the Virginia House of Delegates in mid-May. Plaintiffs' counsel promptly responded, notifying the House of

Delegates that “no one at any of our law firms has reviewed any file on the devices involving the *Bethune-Hill* case,” and inviting the House of Delegates to “identify each . . . file” it believed was privileged. Ex. K at 2-3. More than a month later, counsel for the House of Delegates, who also represent Legislative Defendants, have not responded to this offer.

While Plaintiffs have offered to confer with Legislative Defendants on privilege issues, Legislative Defendants have waived any privilege over North Carolina-related documents several times over, and the Court should so hold. First, Legislative Defendants waived privilege when they did not object to any of the subpoenas to Ms. Hofeller, Ms. Hofeller’s mother, or the Estate of Dr. Hofeller. All of these subpoenas sought materials related to Dr. Hofeller’s work for Legislative Defendants, and Legislative Defendants did not object to any of them. “Where a party is aware” that a subpoenaed third party may possess the party’s privileged information, “the burden falls on that party to take affirmative steps to prevent the disclosure in order [to] preserve the privilege as to itself.” *Am. Home Assur. Co. v. Fremont Indem. Co.*, 1993 WL 426984, at *4 (S.D.N.Y. Oct. 18, 1993). “The failure to act to prevent or object to the disclosure of confidential communications when a party knows or should know that privileged documents may be disclosed by another party waives the privilege with respect to the party failing to act.” *Id.*; see also *Ravenswood Inv. Co., L.P. v. Avalon Corr. Servs., Inc.*, 2010 WL 11443364, at *2 (W.D. Okla. May 18, 2010) (“Because Defendant did not state its claim of privilege within fourteen days of service of the subpoena on [a third party], the Court concludes Defendant has waived any such claim.”); *Patterson v. Chicago Ass’n for Retarded Children*, 1997 WL 323575, at *3 (N.D. Ill. June 6, 1997) (“By failing to object” to third-party subpoena, party “essentially waived her claim to privilege, and the information gleaned via the subpoena may be used.”).

Legislative Defendants contend that they did not waive privilege in failing to object because “they did not know Ms. [Hofeller] had” the materials. Resp. 46. But Plaintiffs’ subpoenas to Ms. Hofeller and other third parties asked for all documents, or devices containing documents, related to Dr. Hofeller’s work on the challenged state House and Senate plans. If Legislative Defendants believed that such materials would necessarily contain privilege information, the “scope of [the] subpoena[s]” “should reasonably have alerted” Legislative Defendants “to the possibility” that one of the subpoenaed third parties, including Ms. Hofeller, “might produce the [allegedly] privileged documents.” *Am. Home Assur.*, 1993 WL 426984, at *4. A party must “jealously guard” its privileged materials. *Navajo Nation v. Peabody Holding Co.*, 255 F.R.D. 37, 45 (D.D.C. 2009). Legislative Defendants’ “failure to take any steps to prevent the disclosure of [allegedly] privileged documents waived the privilege they seek to assert.” *Am. Home Assur.*, 1993 WL 426984, at *4.

Legislative Defendants independently waived any privilege by demanding that Plaintiffs transmit complete copies of all of the Hofeller files to State Defendants and Intervenor Defendants. It is well-established that a party waives privilege where no “reasonable protective measures were employed in order to safeguard claims of privilege” or “to ensure confidentiality” before documents are produced to another party. *Scott v. Glickman*, 199 F.R.D. 174, 179 (E.D.N.C. 2001). Here, at Legislative Defendants’ own behest, Plaintiffs transmitted complete copies of the contents of the storage devices to Intervenor Defendants and State Defendants, neither of which holds any privileged relationship with Legislative Defendants, and at least one of which (State Defendants) is not aligned with Legislative Defendants in this case. Legislative Defendants demanded that Plaintiffs transmit complete copies of the devices to all Defendants even though weeks earlier, on April 9, 2019, Plaintiffs sent Legislative Defendants a searchable

index of file names and file paths that made apparent the devices contain files involving Dr. Hofeller's work for Legislative Defendants. *See* Ex. E at 1. Legislative Defendants could have requested limitations or protective measures before these files were provided to the State Defendants and Intervenor Defendants, but they did not.

Legislative Defendants' brief tellingly does not address this basis for finding waiver. *See* Resp. 45-46. They offer no argument or precedent for the notion that they maintained privilege over "documents [that] were revealed to third parties without objection," and indeed at their own insistence. *Durham Indus. Inc. v. N. River Ins. Co.*, 1980 WL 112700, at *2 (S.D.N.Y. May 8, 1980) (finding waiver); *see also Furniture, Inc. v. Kittinger/Penn. House Grp., Inc.*, 116 F.R.D. 46, 50 (M.D.N.C. 1987) ("the privilege may be lost" by failing "to take affirmative action and institute reasonable precautions to ensure that confidentiality will be maintained").

B. Plaintiffs' Counsel Did Not Give Any Legal Advice to Ms. Hofeller

Rule 4.3, titled "Dealing With Unrepresented Person," provides that, in dealing with an unrepresented person, "a lawyer shall not . . . give legal advice to the person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client." N.C. R. Prof. Conduct 4.3(a). Legislative Defendants assert that Plaintiffs' counsel improperly "gave legal advice" to Ms. Hofeller about "what information she should hand over and how." Resp. 38. Plaintiffs' counsel did nothing of the sort.

The record is clear that Plaintiffs' counsel never gave Ms. Hofeller any legal advice. It is clear from both Ms. Hofeller's deposition testimony and also from her affidavit. *See supra* pp. 7-10. Legislative Defendants pin their argument that Plaintiffs' counsel gave Ms. Hofeller legal advice on her reference to "chain of custody." But Ms. Hofeller's actual testimony was that she believed "it would be best recognized in court as . . . a good chain of custody"—*i.e.*, she believed

it would be in Common Cause’s interests “in court” in this case—if she produced the devices rather than picking and choosing files from them. Ex. B at 67:7-18. When Legislative Defendants’ counsel asked whether Plaintiffs’ counsel had told her “that it would be best for [her] to turn over the entirety,” Ms. Hofeller answered no—“They didn’t say that it would be best.” *Id.* at 115:8-11.

Legislative Defendants’ assertion that Plaintiffs’ counsel’s June 5 response letter “does not deny that Plaintiffs’ counsel gave legal advice,” Resp. 39, is misleading. Unlike Legislative Defendants’ response brief filed last week, their May 31 letter did not assert that Plaintiffs’ counsel gave Ms. Hofeller any “legal advice,” nor did the May 31 letter even mention Rule 4.3(a) or any specific rule of professional conduct. *See generally* Ex. L. Because Legislative Defendants’ May 31 letter did not assert that Plaintiffs’ counsel had given “legal advice” to Ms. Hofeller, Plaintiffs’ counsel had no reason to deny it in their June 5 response letter.

Rule 4.3(a) independently does not apply here because Plaintiffs’ counsel had no reason to believe that there was a “reasonable possibility” that Ms. Hofeller’s interests were “in conflict with the interests of the [Plaintiffs’ counsel’s] client.” N.C. R. Prof. Conduct 4.3(a). The comment to Rule 4.3(a) stresses that the Rule “distinguishes between situations involving unrepresented persons whose interests may be *adverse* to those of the lawyer’s client and those in which the person’s interests are not in conflict with the client’s.” *Id.* cmt.2 (emphasis added) The comment further explains that “[t]his Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person “[s]o long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person.” *Id.*

Here, there was no discernible adversity between Ms. Hofeller and Common Cause that would have triggered Rule 4.3(a). Ms. Hofeller proactively approached Common Cause and

offered to provide materials to help Common Cause in its lawsuit. Legislative Defendants contend that Ms. Hofeller’s interests were “potentially adverse” to Common Cause because Ms. Hofeller supposedly faced personal legal jeopardy based on her acquisition and possession of the devices. Resp. 33-38. But no one other than Legislative Defendants, their counsel, and their allies have accused Ms. Hofeller of any wrongdoing, and their assertions that she committed criminal larceny or tortious conversion are pure *ipse dixit* contradicted by the record. Legislative Defendants cannot bootstrap their own baseless allegations against Ms. Hofeller to create a purported conflict between Ms. Hofeller and Plaintiffs.⁴

C. Plaintiffs’ Counsel Made Clear That They Represented Common Cause

Rule 4.3(b) provides that “a lawyer shall not . . . state or imply that the lawyer is disinterested,” and that “[w]hen the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.” N.C. R. Prof. Conduct 4.3(b). Legislative Defendants wrongly assert that Plaintiffs’ counsel “implied . . . a disinterested status” in their discussions with Ms. Hofeller about producing the devices. Resp. 41.

Ms. Hofeller specifically testified that “it was clear to me at least that -- that Eddie and Caroline were the attorneys that -- that were -- at Common Cause that were working on this matter.” Ex. B at 125:18-23. This testimony—which Ms. Hofeller reaffirms in her affidavit, Ex. A ¶ 18—squarely refutes Legislative Defendants’ assertion. Nor do Legislative Defendants explain how Plaintiffs’ counsel could have given the impression that they were “disinterested”

⁴ Legislative Defendants also gesture at Rule 4.1, which provides that “a lawyer shall not knowingly make a false statement of fact or law to a third person.” N.C. R. Prof. Conduct 4.1; *see* Resp. 41. Legislative Defendants have not come close to establishing that Plaintiffs’ counsel ran afoul of this rule in any respect, and they did not.

when they introduced themselves as counsel for Common Cause in this case, after Ms. Hofeller had offered to provide the documents to Common Cause for its use in this case.

D. Plaintiffs' Counsel Have Been Completely Candid with the Court

Rule 3.3, titled “Candor Toward the Tribunal,” provides that “[a] lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.” N.C. R. Prof. Conduct 3.3(a)(1). Legislative Defendants do not point to any “false statement of material fact” made to the Court. Instead, they argue that Plaintiffs “failed to disclose” information to the Court. Resp. 49. They allege that, in seeking permission from the Court to filter out 1,001 files containing medical, tax, and other sensitive personal information, Plaintiffs did not disclose to the Court that Plaintiffs “actively sought” such information from Ms. Hofeller. Resp. 50.

This is false. Before receiving the devices, Plaintiffs’ counsel did not know the nature of the personal information on the devices, and in particular did not know that the nature of this information meant that its dissemination could trigger legal and privacy concerns. Plaintiffs’ counsel were completely candid with the Court in advising that only after receiving the devices did “it bec[ome] clear . . . that a small percentage of these files on these electronic storage devices, based on their names . . . appear to contain medical, tax and other family personal sensitive information,” and that Plaintiffs proposed filtering out such files “after consulting with our firm’s ethics committee expert on medical privacy.” Ex. G at 6.

Legislative Defendants also imply that Plaintiffs’ counsel misled the Court by purportedly “creat[ing] the impression” that the 1,001 specified personal files were the only files on the devices that did not relate specifically to North Carolina redistricting. Resp. 50. But as stated, Plaintiffs told this Court in an April 12 brief that the devices contained materials relating to Dr. Hofeller’s work in “other states.” 4/12/19 Pls. Reply Br. 5 n.2. Plaintiffs then informed

this Court of the scope of materials on the devices at the April 30 hearing. Ex. G at 5-6.

Plaintiffs have acted with complete transparency to this Court at all times.

II. Legislative Defendants’ Attempt to Designate the Hofeller Files as Highly Confidential Under the Consent Protective Order Is Improper and Unjustified

A. Legislative Defendants Have No Authority to Unilaterally Designate Files They Did Not Produce as Confidential

Legislative Defendants allege that “Plaintiffs have violated the Court’s protective order,” Resp. 31, based on Legislative Defendants’ purported designation of “the entirety” of the Hofeller files as Highly Confidential in their May 31 letter, Ex. L at 1. Legislative Defendants take the position that “[t]here is no limitation on who may designate material produced by non-parties in the protective order.” Resp. 31. Legislative Defendants’ view seriously misconstrues the plain and unequivocal terms of the Consent Protective Order.

Under the Consent Protective Order’s plain terms, only the person who *produces* material in discovery may unilaterally designate such material as Confidential or Highly Confidential. Paragraph 1 provides that, “[t]o fall within the scope of this Agreement,” material produced in discovery must be designated Confidential or Highly Confidential “*by the Party producing the material.*” 4/5/19 Consent Protective Order ¶ 1 (emphasis added). Paragraphs 2 and 3 confirm that only “[t]he producing Party may designate” materials as Confidential or Highly Confidential. *Id.* ¶¶ 2, 3 (emphasis added).

Paragraph 13 of the Order, on which Legislative Defendants rely, provides that “[t]he terms of this order are applicable to information produced by a non-Party in the litigation and designated as [Confidential or Highly Confidential], as applicable.” *Id.* ¶ 13. This provision expressly incorporates the other “terms of this order,” and those other terms—namely Paragraphs 1, 2, and 3—specify that only the “the Party producing the material” may designate such material as Confidential or Highly Confidential. Thus, under Paragraph 13, when information is

“produced by a non-Party,” that non-Party constitutes the “the Party producing the material” for purposes of Paragraphs 1, 2, and 3.

Legislative Defendants contend that Paragraph 13 of the Order allows *anyone* to designate *any* material produced by *any* third party as Confidential or Highly Confidential. But if that were so, the other “terms of this order”—which Paragraph 13 deems “applicable” to material “produced by a non-Party”—would make no sense in the context of production by a non-Party. *Id.* For instance, Paragraph 1 states that material does not “fall within the scope of this Agreement” unless designated Confidential or Highly Confidential “by the Party producing the material.” *Id.* ¶ 1. To reconcile this provision with Legislative Defendants’ position, one would need to excise the phrase “by the Party producing the material” in order for documents produced by non-parties “to fall within the scope of this Agreement” when designated by a receiving party.

Legislative Defendants’ position is irreconcilable with Paragraphs 2 and 3 as well. Paragraph 2 provides that “[t]he producing Party may designate as ‘CONFIDENTIAL’ any materials that *it* produces in the litigation which *it* believes constitutes, contains, reflects, or discloses confidential non-public trade secrets, competitively sensitive or proprietary information,” etc. *Id.* ¶ 2 (emphases added). For a receiving party to have power to designate materials produced by a non-party as “Confidential,” as Legislative Defendants suggest, the phrase “the producing Party” would need to be replaced with “any Party.” Then, one would need to assign different meanings to the two uses of “it” in this same sentence; the first “it” would have to say “a non-party,” but the second “it” would have to say “any party.” The provision would need to read “[any party] may designate as ‘CONFIDENTIAL’ any materials that [a non-

party] produces in the litigation which [any party] believes” meet the relevant criteria.

Legislative Defendants’ position would require a similar rewriting of Paragraph 3.

Of course, there is no need for such re-writing of this Court’s Order. Plain text and common sense make clear that where information is “produced by a non-Party,” *id.* ¶ 13, that non-Party constitutes the “producing Party” for purposes of Paragraphs 1-3. The producer can then designate its material as Confidential or Highly Confidential consistent with all the other “terms of this order,” just as Paragraph 13 specifies. *Id.* ¶ 13.

Legislative Defendants’ position cannot be reconciled with yet more provisions of the Order. As a final example, Paragraph 17 provides that, within 60 days after the conclusion of the case, “all originals and reproductions of Confidential material subject to this Agreement shall be destroyed by the receiving party’s counsel or *returned to the producing party*. Counsel for the receiving party shall certify *to counsel for the producing party* within said sixty (60) day time period that such destruction or return has taken place.” *Id.* ¶ 17 (emphases added). These provisions would be inoperable under Legislative Defendants’ interpretation, because there is no “producing party” under their reading in instances where a non-party produces documents. Again, of course, the plain text and common sense make clear that where a non-party produces materials and properly designates them as confidential, the obligation is to return the materials to that non-party as “the producing party.” In other words, where a non-party produces information, it is the “producing party” for purposes of Paragraph 17, just like it is the “producing party” for purposes of Paragraph 1, 2, 3, and every other operative term of the Order.

In addition to contradicting the plain terms of the Consent Protective Order, Legislative Defendants’ position would be impracticable and invite mischief. It would mean that where one party obtains discovery from a third party, *any* other party can unilaterally designate any or all of

the third party's production as Highly Confidential at any time. It would mean, for example, that Plaintiffs could suddenly designate any documents that Legislative Defendants have received from the DLCC, the DCCC, or other third parties as Highly Confidential, no matter whether Plaintiffs have any connection to those materials, and even if the DLCC or the DCCC did not themselves believe that the materials were confidential in nature. Plaintiffs could do so, under Legislative Defendants' reading, the day before Legislative Defendants' expert reports were due, just as Legislative Defendants tried to do here in designating "the entirety" of the Hofeller files as Highly Confidential shortly before Plaintiffs' rebuttal expert reports were due. Neither the Consent Protective Order in this case nor any other protective order of which Plaintiffs are aware allows a party to unilaterally impose confidentiality restrictions on materials produced to an opposing party by a third party.

B. To the Extent Legislative Defendants Now Request a Judicial Designation of Confidentiality, They Have Failed to Satisfy Their Burden

The Consent Protective Order does provide a mechanism for Legislative Defendants to ask *the Court* to assign a confidentiality restriction for materials produced by a non-party such as Ms. Hofeller. Paragraph 7(f) authorizes "any Party to petition the Court for a further protective order relating to any purportedly confidential information." Consent Protective Order ¶ 7(f). At any time in the more than three months since Ms. Hofeller produced the files, Legislative Defendants could have moved for a protective order under Paragraph 7(f). They could have done so after March 20 when Plaintiffs notified them of receipt of materials. They could have done so after April 9 when Plaintiffs sent them a searchable index of the file names. And they could have done so in early May when they received complete copies of the files. But, to this

day, Legislative Defendants have not filed any such motion. Instead, they resorted to self-help, presumably because they cannot show an entitlement to a protective order from this Court.

Even if Legislative Defendants' response brief constitutes a motion for protective order (which it does not), and even if the Court were to overlook Legislative Defendants' repeated waiver of privilege, Legislative Defendants still have not met their burden to justify treating any individual file, much less all of the Hofeller files, as Confidential or Highly Confidential. A party seeking a protective order under Rule 26(c) "has the burden" of showing good cause "to justify" the relief that it seeks. *Analog Devices, Inc. v. Michalski*, 2006 WL 3287382, at *13 (N.C. Super. Nov. 1, 2006). Specifically, under Rule 26(c), "[a] party asserting good cause bears the burden, *for each particular document it seeks to protect*, of showing that specific prejudice or harm will result if no protective order is granted." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (emphasis added). "[T]he burden of proving confidentiality never shifts from the party asserting that claim," *Parkway Gallery Furniture, Inc. v. Kittinger/Pa. House Grp., Inc.*, 121 F.R.D. 264, 268 (M.D.N.C. 1988), and to "overcome the presumption" that materials produced in discovery should not be subject to restriction, "the party seeking the protective order must show good cause by demonstrating a particular need for protection" over each document for which a protective order is sought, *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986).

Legislative Defendants cannot meet their burden here. Their response brief does not identify even a single specific file they believe warrants confidentiality restrictions. Their brief certainly does not provide, "for each particular document" over which they seek restrictions, an evidentiary "showing that specific prejudice or harm will result if no protective order is granted." *Foltz*, 331 F.3d at 1130. Despite having the searchable index that Plaintiffs sent on April 9 and

their own complete index since May 15, the only specific files they have identified as raising confidentiality concerns are five files listed in their May 31 letter, Ex. L at 1-2, and a generalized reference to “1,300 emails,” Resp. 32, 52. Rather than identify specific files for which they could possibly raise legitimate confidentiality concerns, Legislative Defendants make “[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning.” *Cipollone*, 785 F.2d at 1121. That does “not satisfy the Rule 26(c) test.” *Id.*

It is apparent why, on May 31, Legislative Defendants suddenly sought to designate “the entirety of the materials produced by Ms. Hofeller” as Highly Confidential. Ex. L at 1. Just one day earlier, on May 30, Plaintiffs’ counsel submitted several files from the devices to federal courts in separate litigation involving the addition of a citizenship question to the census. Neither Legislative Defendants nor anyone else has claimed that any of the documents filed in the Census case are “proprietary and privileged.” Resp. 31. Nor could they. Those documents are, however, indisputably relevant to a case of profound national importance. In the census case in Maryland, the district court has found that this evidence “shows that a longtime partisan redistricting strategist, Dr. Thomas Hofeller, played a potentially significant role in concocting the Defendants’ pretextual rationale for adding the citizenship question,” and this “new evidence potentially connects the dots between a discriminatory purpose—diluting Hispanics’ political power—and Secretary Ross’s decision.” *Kravitz v. United States Dep’t of Commerce*, --- F. Supp. 3d ---, 2019 WL 2576353, at *2, *4 (D. Md. June 24, 2019). The court further found that the evidence found in the Hofeller files “casts doubt on the plausibility of [the] testimony” of Secretary Ross’ advisor on census issues. *Id.* at *5. On the basis of these findings, the Fourth Circuit two days ago remanded the case to the district court to consider whether this evidence

establishes an equal protection violation. *See La Union del Pueblo Entero v. Ross*, --- F. App'x ---, 2019 WL 2593968 (4th Cir. June 25, 2019).

Legislative Defendants have offered shifting rationales for their attempt to designate the Hofeller files as Highly Confidential. In their May 31 letter, Legislative Defendants asserted that the devices contain additional “confidential financial information,” beyond the 1,001 files. Ex. L at 1. Yet, Legislative Defendants’ June 17 response brief makes no mention of such “confidential financial information.” Instead, Legislative Defendants now claim their May 31 letter “designated the production from Ms. [Hofeller] ‘Highly Confidential’ based on their concern that it contained proprietary and privileged information.” Resp. 31. But even this re-characterization of the May 31 letter seems not to be the basis for their current demands. Now, Legislative Defendants rest their attempt to designate the entirety of the Hofeller files as Highly Confidential on baseless accusations of criminal misconduct by Ms. Hofeller and ethical violations by Plaintiffs’ counsel. *Id.* at 52. Legislative Defendants’ “shifting explanations for [their] actions” are strong evidence of their “pretextual nature.” *Bechtel Const. Co. v. Sec’y of Labor*, 50 F.3d 926, 935 (11th Cir. 1995). So is the fact that Legislative Defendants purported to designate “the entirety” of the Hofeller files as Highly Confidential just one week before Plaintiffs’ rebuttal expert reports were due.

The scope of Legislative Defendants’ designation attempts is also improper. Legislative Defendants’ May 31 letter listed just five files that they contend may be privileged, Ex. L at 2, and their June 17 filing alleges (without specificity) that they have identified 1,300 potentially privileged emails, Resp. at 45. But Legislative Defendants seek to designate the entire set of over 75,000 Hofeller files as Highly Confidential. Those files include scores of documents

unrelated to North Carolina. Legislative Defendants have no legal interest in, and no standing to seek confidentiality designations regarding, documents unrelated to North Carolina.

As for the documents relating to North Carolina, the vast majority of these records are public records over which Legislative Defendants have disclaimed any confidentiality. Consistent with N.C. Gen. Stat. § 120-133(a), Dr. Hofeller's contracts with the General Assembly to draw both the 2017 state House and state Senate plans and the 2016 congressional plan expressly state that "all drafting and information requests to [Dr. Hofeller] and documents prepared by [Dr. Hofeller] concerning redistricting *shall no longer be confidential and shall become public records* upon the act establishing the relevant district plan becoming law." Exs. O, P (emphasis added). Thus, "all . . . documents" that Dr. Hofeller "prepared" in developing the 2017 state House and state Senate plans and the 2016 congressional plan lost any confidentiality and become public records upon the passage of those plans. There appear to be tens of thousands of documents among the Hofeller files that fall into this category. These records belong to the people of North Carolina and should have been made public long ago. Legislative Defendants cannot designate these files as Confidential or Highly Confidential.

III. Legislative Defendants Ignore or Misrepresent Their Prior Assertions to the *Covington* Court and the Related Evidence That Plaintiffs Have Put Forward, Which Will Be Introduced at Trial to Substantiate Plaintiffs' Claims

With respect to certain representations that Legislative Defendants made to the federal court in *Covington* relating to the development of the 2017 Plans, Legislative Defendants state that "Plaintiffs should save their assertions for trial and stick to what they can support with evidence." Resp. 29. Yet every form of relief sought by Legislative Defendants reflects an effort to prevent Plaintiffs from introducing the relevant evidence at trial. Legislative Defendants seek to have the files returned and/or destroyed, and have filed a motion *in limine* to prevent any of the relevant Hofeller files from being admitted at trial.

Plaintiffs agree that litigating the substance and import of the relevant Hofeller should be left “for trial,” at which Plaintiffs will “support [their claims] with evidence.” Resp. 29. To that end, Plaintiffs have filed a motion *in limine* to admit the relevant Hofeller files, which relate not only to the representations made to the *Covington* court, but also to the core merits issue of partisan intent as well as the question of whether the 2017 Plans comply with the official adopted criteria. However, because Legislative Defendants’ response brief includes several material misstatements in their June 17 filing on these issues, Plaintiffs briefly address them here.

Legislative Defendants claim that Plaintiffs “failed to identify the relevant representations” made in *Covington*. Resp. 20. Yet, as to both the issue of when the maps were drawn and the incorporation of racial data, Plaintiffs’ June 5 letter cited numerous specific assertions by Legislative Defendants in *Covington*. Ex. J at 7-13. As to racial data, Plaintiffs cited Legislative Defendants’ statements that “[t]here was no racial data reviewed in the preparation of this map,” and that “data regarding the race of voters . . . was not even loaded into the computer used by the map drawer to construct the districts.” *Id.* at 12 (quoting *Covington*, ECF No. 192 at 28, ECF No. 184-18 at 20). Legislative Defendants made even more statements to the same effect not cited in Plaintiffs’ letter. At an October 2017 hearing, Legislative Defendants told the *Covington* court that Dr. Hofeller “ignored the racial data,” and that “there is no evidence, none whatsoever, that Dr. Hofeller . . . looked at any [racial] data.” Ex. M at 84-85. On appeal, Legislative Defendants repeatedly told the U.S. Supreme Court that “the 2017 Plan was drawn without any consideration of race.” Emergency App. For Stay at 1, 16, 25, *North Carolina v. Covington*, No. 17A790 (U.S. Jan. 24, 2018).⁵

⁵ <https://www.brennancenter.org/sites/default/files/legal-work/17-A-790-North-Carolina-v.-Covington-Stay-App.pdf>.

The files that Plaintiffs' expert Dr. Chen analyzed in his rebuttal report prove that these assertions were not accurate. They show, among other things, that Dr. Hofeller did review this racial data "in the preparation of [the] map," and that he did have racial data loaded into the computer used "to construct the districts." For instance, the relevant files show that Dr. Hofeller sorted the districts in draft House and Senate maps from highest to lowest African-American voting age population (BVAP), and that for at least one draft House map saved in August 2017, he visually displayed on his screen the BVAP of every district. 6/21/19 Mot. *in Limine* to Admit Certain Files of Dr. Thomas B. Hofeller, Ex. F at 39-40. Legislative Defendants barely respond. They claim that one of the assertions related only to the computer that Dr. Hofeller used at the General Assembly, Resp. 29, but the statements just quoted contained no such qualification; Legislative Defendants categorically asserted that the map maker did not have or review any racial data in drawing the new districts.

Legislative Defendants also claim that Plaintiffs are "simply recycling a dispute in the *Covington* case," and that the *Covington* court purportedly had no "concern" that Dr. Hofeller may have been using racial data. Resp. at 29. The record in *Covington* shows otherwise. Upon finding that Legislative Defendants had carried out "among the largest racial gerrymanders ever encountered by a federal court," *Covington v. North Carolina*, 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017), the *Covington* court ordered Legislative Defendants to disclose the extent to which race was considered in drawing new remedial districts, 267 F. Supp. 3d 664, 668 (M.D.N.C. 2017), and then repeatedly questioned Legislative Defendants about this issue at the October 2017 hearing. If Legislative Defendants had disclosed to the *Covington* court that their map drawer had and reviewed racial data on all of the new districts, there is every reason to believe that the court would have considered this information material.

As for the fact that Dr. Hofeller by June 2017 had already completed drawing roughly 97% of the new Senate plan and 90% of the new House plan, Legislative Defendants assert in their June 17 brief that “Plaintiffs have no substantiation for these numbers, and it is not clear what they even mean.” Resp. 26. But ten days earlier, Plaintiffs served Legislative Defendants with Dr. Chen’s rebuttal report explaining in detail and providing the evidence establishing those statistics. 6/21/19 Mot. in Limine to Admit Certain Files of Dr. Thomas B. Hofeller, Ex. F at 2-38. Indeed, Legislative Defendants asked Dr. Chen about these statistics at his June 11 deposition, and Dr. Chen explained his calculations at length. Ex. N at 357:5-364:14.

Legislative Defendants assert that “all parties” in *Covington* entered into a stipulation that “represented on behalf of all parties that Rep. Lewis lacked knowledge either way on what Dr. Hofeller had done” as of July 2017. Resp. 21; *see also id.* at 23-24. But Legislative Defendants misleadingly crop the relevant quotation, which provided that “*the legislative defendants stipulate that . . . Rep. Lewis has not assigned Dr. Hofeller to fill in the House and Senate grouping maps . . . , nor has he seen or approved such a map and does not know if Dr. Hofeller has drawn such a map.*” Resp., Ex. 1 ¶ 5 (emphasis added). While all parties joined the stipulation, no other party joined in this specific representation by “the legislative defendants.”

Legislative Defendants suggest that the *Covington* court knew Dr. Hofeller may have been “engaged in map-drawing” prior to July 2017, and they imply that the court would not have been disturbed to know that Dr. Hofeller had already substantially completed the new plans. Resp. 24. The facts again tell a different story. In the same July 31, 2017 opinion from which Legislative Defendants quote, *see id.*, the *Covington* court noted with exasperation Legislative Defendants’ “failure . . . to take *any* apparent action” to develop remedial plans “since the Supreme Court unanimously affirmed” the district court’s merits decision on June 5, 2017.

Covington, 267 F. Supp. 3d at 667 (emphasis added). We now know that Dr. Hofeller had been feverishly working on the new plans throughout all of June and July 2017. It is beyond peradventure that this fact would have been noteworthy to the *Covington* court.

Legislative Defendants also ignore the representations they made as to *why* they purportedly needed an extended timeline to develop remedial plans. They told the court they needed sufficient time “to receive public input, engage in internal discussions about the design of remedial districts, prepare draft remedial plans, receive public responses to those draft remedial plans, and incorporate public feedback into the final plans.” *Covington*, ECF No. 161, at 2. The *Covington* court granted a lengthy remedial timeline, and declined to order special elections under new plans, specifically based on what “Legislative Defendants represented to the Court” in this regard. *Covington*, 267 F. Supp. 3d at 666. We now know that Legislative Defendants did not need time to receive public input, engage in internal discussion, prepare draft plans, receive public responses, and incorporate public feedback with respect to the overwhelming majority of districts that did not change from Dr. Hofeller’s June 2017 drafts. Moreover, after the plans were enacted, Legislative Defendants told the district court that “the map drawer *started with a clean slate*” in drawing the 2017 Plans. Ex. M at 78 (emphasis added). But Dr. Hofeller did not “start[] with a clean slate” when he was retained to draw the 2017 Plans. The Hofeller files show that he started with the 2011 Plans as his base, and then continually worked on revising them into news plans from November 2016 through July 2017.

Legislative Defendants say that they did not know Dr. Hofeller was at work on the new plans prior to August 10, 2017. Resp. 23-29. For that claim to be true, it would need to be the case that, at a minimum:

- Dr. Hofeller, on his own and without pay, was working on a continuous basis from November 2016 through July 2017 to develop new state House and state Senate for North Carolina, without telling Legislative Defendants or their counsel a word about it.
- Before Legislative Defendants submitted their July 2017 filing asserting that they had not “start[ed] the laborious process” of drawing new plans and needed time to “prepare draft remedial plans,” *Covington*, ECF No. 161 at 2, 28, neither Legislative Defendants nor their counsel asked Dr. Hofeller whether he had started working on new plans.
- After Legislative Defendants made these assertions, and after the court relied on them in its July 31, 2017 order, Dr. Hofeller never informed Legislative Defendants or their counsel that he had not only begun the new plans, but substantially completed them.
- Per assertions made to the *Covington* court, “[s]hortly following [the court’s] order of July 31, 2017, . . . Senator Ralph Hise and Representative David Lewis[] met with . . . Dr. Hofeller,” and “[r]edistricting concepts were discussed with Dr. Hofeller” at that meeting. *Covington*, ECF No. 192 at 6. But Dr. Hofeller never mentioned at the meeting that he had already starting drafting the new plans.

This Court can evaluate the credibility of these assertions, which will be relevant to determining whether Legislative Defendants should be afforded an opportunity to develop a remedial plan if Plaintiffs prevail on the merits. But regardless of the credibility of these claims, for purposes of the upcoming trial, Plaintiffs will establish through the relevant Hofeller files that the 2017 Plans could not have been drawn with an intent to comply with the adopted criteria given that they were already substantially complete a month-and-a-half before the adopted criteria were passed.

CONCLUSION

Legislative Defendants should not be attempting to conceal evidence by making unauthorized and improper confidentiality designations. They should not be demanding the return and destruction of relevant, admissible evidence. And they should not be leveling unfounded accusations of misconduct against Plaintiffs, their counsel, or Ms. Hofeller.

For the reasons stated above, this Court should grant Plaintiffs’ motion and confirm that (a) Plaintiffs are not required to return or destroy material properly produced in response to lawful court process in discovery in this case, and (b) Legislative Defendants are not entitled to

unilaterally designate material produced in discovery by other parties or third parties as Confidential or Highly Confidential under the Consent Protective Order. Additionally, the Court should deny all of the relief requested by Legislative Defendants in their response.

Respectfully submitted this the 27th day of June, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by email, addressed to the following persons at the following addresses which are the last addresses known to me:

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This the 27th day of June, 2019.

/s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.

EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

**AFFIDAVIT OF STEPHANIE
HOFELLER**

COMES NOW the Affiant, Stephanie Hofeller, and states the following:

1. I am over the age of eighteen and under no legal disability.
2. I was deposed in this matter on May 17, 2019 and I understand that that testimony has been offered to the Court by one or more parties to this proceeding.
3. My understanding of the purpose of that deposition was to authenticate a series of external hard drives and flash drives I was given by my mother that had information I believed might be relevant to this matter. I provided that information to Plaintiff's counsel in response to a subpoena they served on me.
4. In that deposition, I was questioned for 4-5 hours by attorneys for the plaintiffs and the defendants. I was under the impression that I had answered all the questions the attorneys for both sides had with regard to my actions in responding to the subpoena.
5. I then recently read a filing in this case entitled "Legislative Defendants' Response to Plaintiff's Motion for Direction" which filing made it clear to me that, while I



answered completely and truthfully all of the questions posed to me, there were things I was not asked and therefore did not answer, and that has apparently led to misunderstandings by the parties' attorneys.

6. I offer this affidavit to address those unasked and therefore unanswered questions.

7. First, I did not steal anything from my mother nor did I manipulate my mother into giving me anything, nor would I ever do so.

8. Specifically, allegations that my mother was incompetent at the time she gave me the computer drives at issue are simply not true. While I am not a medical professional, I know my mother well and in my lay opinion, she is not now, nor has she ever been, incompetent.

9. Further, it is apparent to me that neither the petitioner in my mother's incompetency matter, the attorney for the petitioner in that matter, nor the attorney representing my mother in that matter believe her to be – or to have, at any time, been – incompetent. I state this with some certainty because, very soon after the filing of the petition to find my mother incompetent, the petitioner (an attorney) and the other involved attorneys began negotiating a settlement ... a settlement in which my mother was a part of negotiating and ultimately was required to sign. I assume that attorneys cannot ethically participate in negotiations with or involving an incompetent person they represent or an adverse party they believe to be incompetent.

10. Furthermore, one of the filings in that matter was an initial filing where the petitioner's attorney moved the court to compel my mother to participate in medical evaluations to assist the court in the determination of my mother's competency (a.k.a., a Multi-Disciplinary Evaluation). Yet during the preliminary hearing, the motion was not brought, nor granted, nor was the request for a multi-disciplinary evaluation subsequently made in any context.



11. The petitioner, an attorney himself, with his counsel dismissed the case without offering any evidence to any court other than allegations during an initial, effectively ex-parte hearing (of which, inexplicably, NO RECORD exists). Stated differently, my mother has never been found to be incompetent. In the state of North Carolina, an individual is presumed competent until and unless clear, cogent and convincing evidence of incompetence is provided to the court, and an official finding of incompetence recorded.

12. I was not a signatory to the agreement. In fact, I recommended to my mother that she not enter into it but rather go to hearing so that she could be found to be that which she is ... competent. I offer this to demonstrate that, to the extent people accuse me of being manipulative, I was unable to "manipulate" my mother into not signing an agreement that, in spite of the fact that it inures largely to the benefit of my children and myself, I believe to be grievously onerous and contrary to her best interest.

13. Although I exhaustively stated this in my deposition, I wish to make explicitly clear that attorneys representing Common Cause have, without exception, behaved respectfully towards me, and I at no time observed or was aware of any unethical or illegal behavior on their part. I do not feel now, nor do I, in retrospect, nor did I, at any time in the past, feel coerced, mislead, misinformed or pressured in any way whatsoever.

14. In every conversation I had with Attorneys Edward Speas and/or Caroline Mackie prior to late April, they asked if I was represented by counsel in this matter, and I told them I was not.

15. I have always understood that I had the right, and I have always had the ability, to seek counsel to represent me in regard to this matter, and, ultimately, I did not choose to retain an attorney in this matter until late April or early May.

16. Since I retained counsel in this matter, I have not had any conversations with any attorney for any of the parties to this lawsuit without my attorney being present either in person or telephonically.

17. I have never understood either Attorney Speas or Attorney Mackie to have been giving me legal advice or acting as my attorneys.

18. In every conversation I had with Attorneys Speas and/or Mackie, I understood they represented Common Cause, one of the plaintiffs in this matter, and I also understood they were acting exclusively in the interest of their client.

19. I was never given any explicit direction, legal advice or instructions about what to send in response to the subpoena I received in this matter.

20. It was my decision, in sending the various storage devices (drives) in response to that subpoena, not to remove any of the files from them because I felt it important that the files be preserved intact, as I found them, and without any modification by me of what was on those drives.

21. Before sending the drives in response to the subpoena, I fully understood that they contained information personal to me and my family as well as my father's work files; still, I chose, for the reason stated in the preceding paragraph to send all of the information without removing any of it.

22. Before responding to the subpoena, I never informed the attorneys for Common Cause about the scope of material on the drives, about the specific content of any of the files on them, or that the drives contained information about states other than North Carolina.

23. Indeed, my primary interest in asking my mother for the drives was to seek specific personal information I hoped they contained. Although I soon became aware that files



related to my father's work were included, I viewed only a very small fraction of the overall content. As such, I was not familiar, and therefore did not (and in fact, could not, have) informed Attorneys Speas and/or Mackie of the scope of the contents of those drives.

24. Before the attorneys for Common Cause submitted certain documents from the drives to any other court in any other case, I was asked by that counsel, and in the presence of my own counsel, for my consent for such use, and I gave my consent.

25. I have no objection to the attorneys involved in this matter sharing non-personal materials from the drives with parties in other lawsuits, so long as I am informed ahead of time so that I understand where this information is being used.

26. Finally, contrary to the unsupported assertion made in the Legislative Defendants' Response, I did not attend the Common Cause conference they mentioned. In fact, I have never attended any Common Cause conference. Additionally, I had no communication whatsoever with David Daley until June 20th of this year, well after my deposition, when we were given each other's contact information by a party not affiliated with the Plaintiff's or their attorneys.

Further the Affiant sayeth not.

[Signature page follows]




Stephanie Hofeller

STATE OF KENTUCKY

COUNTY OF Fayette

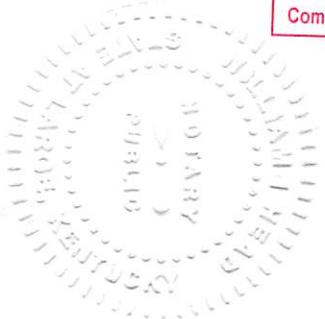
On this, the 26 day of June 2019, Stephanie Hofeller came before me and, being duly sworn, affirmed the truth of the statements contained in the foregoing Affidavit and, thereafter, executed it.

William Head
Notary ID: 517890
Comm. Expires: Aug. 14 2021


Signature of Notary

William I Head
Handwritten Name of Notary

My commission expires: Aug 14 2021





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EXHIBIT B

1 PROCEEDINGS
 2 THE VIDEOGRAPHER: Going on the record
 3 at 9:38 a.m. Today's date is May the 17th,
 4 2019. This begins the video deposition of
 5 Stephanie Hofeller taken in the matter of
 6 Common Cause, et al., versus David Lewis, in
 7 his Official Capacity As Senior Chairman of
 8 the House Select Committee on Redistrict --
 9 Redistricting, et al. This is filed in the
 10 General Court of Justice, Superior Court
 11 Division, in Wake County, North Carolina,
 12 Case Number 18 CVS 014001.
 13 If counsel will please identify
 14 yourselves for the record and whom you
 15 represent and then our court reporter will
 16 swear in our witness.
 17 MR. JONES: Stanton Jones from Arnold &
 18 Porter for the plaintiffs.
 19 MR. SPEAS: Eddie Speas with Poyner
 20 Spruill for the plaintiffs.
 21 MR. COX: Paul Cox with the North
 22 Carolina Attorney General's Office for the
 23 State Board of Elections.
 24 MR. BRANCH: John Branch with Shanahan
 25 Law Group for the intervenor defendants.

5

1 MR. FARR: Tom Farr with Ogletree
 2 Deakins for the def- -- legislative
 3 defendants.
 4 MS. SCULLY: Elizabeth Scully with
 5 BakerHostetler for the legislative
 6 defendants.
 7 MR. SPARKS: Tom Sparks representing
 8 the deponent, Stephanie Hofeller.
 9 * * * *
 10 STEPHANIE HOFELLER,
 11 having been first sworn or affirmed by the court
 12 reporter and Notary Public to tell the truth, the
 13 whole truth, and nothing but the truth, testified
 14 as follows:
 15 EXAMINATION
 16 BY MR. JONES:
 17 Q. Good morning, Ms. Hofeller.
 18 A. Hello.
 19 Q. I'm Stanton Jones from Arnold & Porter and I
 20 represent the plaintiffs in this lawsuit.
 21 Would you please state your full name for the
 22 record.
 23 A. Stephanie Louise Hofeller.
 24 Q. Excellent. And am I right that you
 25 previously went by what I believe is a

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1 married name of Stephanie Hofeller Lizon?
 2 A. It was actually Stephanie Louise Lizon.
 3 Q. Okay. And now you -- you've dropped the
 4 Lizon; you just go by Stephanie Hofeller?
 5 A. That's right.
 6 Q. And that's your maiden name?
 7 A. Correct.
 8 Q. Excellent. Okay. I'll go over some brief
 9 ground rules for the deposition today if
 10 that's okay.
 11 A. Yes.
 12 Q. So you understand that you've taken an oath
 13 to tell the truth today?
 14 A. I do.
 15 Q. Great. And the court reporter is taking down
 16 everything that we say so let's try not to
 17 talk over one another. If you let me finish
 18 my question, I will let you finish your
 19 answer. Does that make sense?
 20 A. Acknowledged, yes.
 21 Q. Your -- your counsel may object to some of my
 22 questions today and -- and that's fine.
 23 Un- -- you understand that unless he
 24 instructs you not to answer a question, you
 25 should let him state his objection for the

7

1 record and then you'll go ahead and answer?
 2 A. Yes, I understand that.
 3 Q. Great. Is there any reason that you couldn't
 4 give complete, accurate, and truthful
 5 testimony today?
 6 A. No.
 7 Q. And if you want a break, just let me know.
 8 We'll finish the question and answer that
 9 we're doing and -- and happy to take a break
 10 whenever you'd like, okay?
 11 A. All right. Thanks.
 12 Q. What state do you live in?
 13 A. Kentucky.
 14 Q. Great. So you don't live in North Carolina?
 15 A. That's correct.
 16 Q. Okay. And where you live in Kentucky, how
 17 far is it from where we are in Raleigh?
 18 A. It's about a ten- or 11-hour drive.
 19 Q. Okay. Do you know, roughly how many miles is
 20 it?
 21 A. Roughly 650, something like that, I think.
 22 Q. Okay. And can you tell me, who -- who are
 23 your parents?
 24 A. My father is Thomas Brooks Hofeller and my
 25 mother is Kathleen Hartsough Hofeller.

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1 Q. Great. So I have some questions about the
 2 subpoena that you received in this case. Is
 3 that okay?
 4 A. Yes.
 5 Q. Great. So earlier this year you received a
 6 subpoena from the plaintiffs in this case; is
 7 that right?
 8 A. That's correct.
 9 Q. Okay.
 10 MR. JONES: Mark this.
 11 (HOFELLER EXHIBIT 1 was marked for
 12 identification.)
 13 BY MR. JONES:
 14 Q. I'm showing you what's been marked as Exhibit
 15 1. Do you recognize this document as the
 16 subpoena that you received from the
 17 plaintiffs in this case?
 18 A. Yes. Yes, I do.
 19 Q. Okay. And do you see on the first page under
 20 name and address of person subpoenaed on the
 21 left side toward the top it says, Stephanie
 22 Hofeller Lizon? That -- that's you, correct?
 23 A. That is me.
 24 Q. Okay. Great. And it says, care of Tom
 25 Sparks, Esquire. That's -- that's your

1 attorney, correct?
 2 A. That's my attorney.
 3 Q. Great. Okay. And if you look down in the
 4 handwritten portion where there's a date and
 5 a signature, do you see it's dated February
 6 13th, 2019?
 7 A. I do.
 8 Q. Okay. And is -- does -- is that around the
 9 time that you recall receiving this subpoena?
 10 A. Yes.
 11 Q. When you received the subpoena, did you take
 12 a look at it?
 13 A. Yeah.
 14 Q. Great.
 15 A. I got it in a electronic format initially
 16 from my attorney because I wasn't actually in
 17 the state at that moment, but I was shortly
 18 after that.
 19 Q. Great. And if you flip a couple of pages
 20 ahead to what's -- what's marked as Page 2 at
 21 the bottom of the page, do you see where it
 22 says, list of documents and things to be
 23 produced pursuant to this subpoena?
 24 A. Yes, I do.
 25 Q. Okay. And when you received this subpoena in

1 February, did you review this -- this list of
 2 documents and things that were -- were asked
 3 to be produced?
 4 A. Yes, I did.
 5 Q. Okay. And did -- did you understand that the
 6 subpoena was requesting any electronic
 7 storage devices that had any of your father's
 8 work drawing maps for the North Carolina
 9 legislature?
 10 A. Yes.
 11 Q. Okay. Did you have any materials that were
 12 responsive to these requests in the subpoena?
 13 A. I did.
 14 Q. Okay. And -- and were -- am I right that
 15 those were electronic storage devices?
 16 A. Yes.
 17 Q. Okay.
 18 A. External hard drives and ad -- I don't know
 19 what the proper -- or what people prefer to
 20 call them, ad-stick, thumb drive, external
 21 storage devices to be used as backup
 22 principally.
 23 Q. Okay. So -- so the materials that you had
 24 that were responsive to the requests in the
 25 subpoena were -- were external hard drives

1 and external what we'll call thumb drives?
 2 A. That's correct.
 3 Q. Okay. Great.
 4 A. Nothing that -- that appeared to have been
 5 pulled out from an already assembled
 6 computer. These were all, you know, backup
 7 devices.
 8 Q. Okay. These were all external devices that
 9 you would need to plug into a computer some
 10 way --
 11 A. Correct.
 12 Q. -- to look at them? Okay. Am I right that
 13 these storage devices had previously belonged
 14 to your father?
 15 A. Yes.
 16 Q. Okay.
 17 A. And mother.
 18 Q. And -- and you understood that the storage
 19 devices contained your father's work on North
 20 Carolina legislative maps?
 21 MS. SCULLY: Objection to form,
 22 leading. You can answer.
 23 A. It was -- at what point you -- I would have
 24 to -- to ask you to clarify at what point
 25 it -- it was or wasn't clear. I knew -- when

1 I first saw them I knew that they were all
 2 belonging to my father and mother. I wasn't
 3 really sure which of them, if any, would have
 4 anything involving his work in North Carolina
 5 or elsewhere.
 6 Q. Got it. Let -- let's focus on the time when
 7 you received the subpoena and you --
 8 A. Oh, at that point, yes, I did know that it
 9 contained -- that all of those devices had at
 10 least -- at least one or two -- at least one
 11 or two files that would -- that were labeled
 12 in a -- in a way that it was obvious that
 13 they pertained to my father's work
 14 redistricting in North Carolina.
 15 Q. And did you send the storage devices -- those
 16 storage devices that we've been discussing to
 17 the plaintiffs' lawyers in response to the
 18 subpoena?
 19 A. Yes, I did.
 20 Q. Okay. Do you recall roughly when you sent
 21 them?
 22 A. I remember it was about a month after I
 23 received the subpoena. Originally, I -- my
 24 intention was to -- to bring them physically
 25 to Raleigh, but I got delayed and it was then

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1 decided that it would be best for preserving
 2 the integrity of -- of the evidence that it
 3 would be going straight to a third party.
 4 Q. Great. And I'll represent to you that I
 5 received the materials you sent on March
 6 13th. Does that sound about right in terms
 7 of --
 8 A. That does.
 9 Q. -- the time?
 10 A. That does, actually. Where -- where I was in
 11 Kentucky, I couldn't even find a FedEx
 12 office. I had to go -- I had to go down the
 13 highway. I was surprised.
 14 MR. JONES: Can we mark this?
 15 (HOFELLER EXHIBIT 2 was marked for
 16 identification.)
 17 BY MR. JONES:
 18 Q. I'm showing you what's been marked as Exhibit
 19 2. On the -- you can take a moment to -- to
 20 flip through. That's fine. Go ahead.
 21 A. That's...
 22 Q. So my first question is, if you look at the
 23 very first page, do you -- do you recognize
 24 the -- the photograph -- the photographs
 25 there as images of the package that you sent

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1 containing the storage devices in --
 2 A. Yes.
 3 Q. -- response to the subpoena?
 4 A. Yes, that does appear to be the box that I
 5 sent them in, exactly.
 6 Q. Great. And -- and on the first page, if you
 7 look at that top picture, it's addressed to
 8 R. Stanton Jones at Arnold & Porter, LLP, at
 9 an address in Washington, D.C. Is that the
 10 address where you sent the package?
 11 A. Yes.
 12 Q. Great. And if you flap -- flip to the second
 13 page, do you recognize those as additional
 14 photographs of the outside of the package
 15 that you sent with the storage devices in
 16 response to the subpoena?
 17 A. Yes.
 18 Q. If you flip to the third page, if you'll
 19 focus on the bottom image, do you recognize
 20 that as a photograph of the -- the interior
 21 of the box that you sent to the plaintiffs'
 22 lawyers with the storage devices in response
 23 to the subpoena?
 24 A. Yes.
 25 Q. Okay. If you flip to Page 4, do you

15

1 recognize the image there as being one of the
 2 thumb drives that you put in the -- in the
 3 package and sent to the plaintiffs' lawyers
 4 in response to the subpoena?
 5 A. Yes.
 6 Q. Okay. Do you remember offhand how many
 7 external hard drives there were and how many
 8 thumb drives there were?
 9 A. I know there were four external hard drives.
 10 I honestly don't remember exactly how many --
 11 you know, there were -- I -- I -- there were
 12 a couple of empty thumb drives in my -- in
 13 my, you know, possession so I -- I was making
 14 sure that I wasn't, you know, sending
 15 anything wrong. These were all the ones
 16 that -- that I got from my father, but I
 17 don't remember exactly -- from his room, but
 18 I don't remember exactly how many there were.
 19 Like eight or nine, maybe, was it, or seven?
 20 Q. So if I -- I'll represent to you that inside
 21 the package that we received that we're
 22 looking at photographs of there were -- there
 23 were four external hard drives, as you said,
 24 and also 18 thumb drives.
 25 A. 18, yeah. Okay.

16

1 Q. Does that seem right?
 2 A. Yeah.
 3 Q. Great.
 4 A. Yeah.
 5 MR. FARR: Excuse me. I don't mean to
 6 interrupt and I'm new to the game, but what
 7 were the stipulations about objections in
 8 this case? Are all objections reserved
 9 except for privilege and form of the
 10 question?
 11 MR. SPEAS: Yeah. That's the way we've
 12 been operating so far.
 13 MR. FARR: Okay. Thank you.
 14 BY MR. JONES:
 15 Q. I'm not going to go through every single
 16 photograph here. There's about 50 pages of
 17 photographs. But would you just take a
 18 moment and flip through them and if you could
 19 just tell me, do you recognize these as
 20 photographs of the storage devices, both the
 21 external hard drives and the thumb drives,
 22 that you sent to the plaintiffs' lawyers in
 23 response to the subpoena? Do you recognize
 24 them that way?
 25 A. So far, yes. It's a rainbow of colors. I

17

1 remember that, too. Yes, those look -- all
 2 of them I -- I remember.
 3 Q. Great. So having flipped through all of the
 4 photographs here, you recognize all of these
 5 images --
 6 A. Yes.
 7 Q. -- as being --
 8 A. I -- I don't see anything that I didn't have
 9 my hands on and put in that package.
 10 Q. Okay. Excellent. Would you flip to Page 23.
 11 Do you see the image there of a storage
 12 device with the label, NC Data?
 13 A. Yes, I do.
 14 Q. Do you recall that as one of the images that
 15 you sent?
 16 A. I do.
 17 Q. Or, sorry, as one of the --
 18 A. One of the --
 19 Q. -- storage devices?
 20 A. -- storage devices, yes.
 21 Q. Okay. Before sending all of these storage
 22 devices to the plaintiffs' lawyers in
 23 response to the subpoena you received, did
 24 you alter any of the -- the contents of the
 25 storage devices?

18

1 A. No.
 2 Q. Okay.
 3 A. No.
 4 Q. Did you -- did you delete any files that were
 5 on any of the storage devices?
 6 A. No. I was careful not to add or take
 7 anything away.
 8 Q. Did you modify any of the files in any way?
 9 A. No.
 10 Q. Okay. You didn't make any changes at all to
 11 any of the files --
 12 A. None.
 13 Q. -- on the storage devices? You have to --
 14 A. I'm sorry.
 15 Q. Yeah. You -- you -- I'll just start over
 16 again so we have a clean record.
 17 A. Yes.
 18 Q. So you -- you did not make any changes to any
 19 of the files or data on these storage devices
 20 before sending them to the plaintiffs'
 21 lawyers in response to the subpoena?
 22 A. That's correct. I did not.
 23 Q. Okay. You can put that to the side. So now
 24 I have some -- some pretty basic questions
 25 about where you got the devices from. Is

19

1 that okay?
 2 A. Yes.
 3 Q. Okay. Great. So, first, can you please tell
 4 me just the month and the year when you got
 5 these devices.
 6 A. October 2018.
 7 Q. Okay. And next could you please tell me just
 8 where specifically did you get the devices
 9 from, just the physical location for
 10 starters?
 11 A. The apartment where my recently deceased
 12 father lived with my mother at Springmoor.
 13 Q. Okay. And what is Springmoor?
 14 A. Springmoor is a retirement community.
 15 Q. Okay. And your father and mother had been
 16 living in this apartment in Springmoor before
 17 his -- his death; is that right?
 18 A. That's correct.
 19 Q. Okay. And at the time you got these files
 20 from the Springmoor apartment in October
 21 2018, was your mother living there at the
 22 time?
 23 A. Yes, she was.
 24 Q. Okay. Before getting the devices from the
 25 apartment in Springmoor, did you ask your

20

1 mother if it was okay to take them?
 2 A. Yes, I did.
 3 Q. Okay. And did you ask her that in October
 4 2018?
 5 A. Yes, that -- that same day.
 6 Q. Okay. Did your mother object to you taking
 7 the devices?
 8 A. No, she didn't.
 9 Q. Okay. Did -- did -- did she say it was okay
 10 to take the devices?
 11 A. Yes. She encouraged me to.
 12 Q. Okay. So now I'm -- I'm going to back and --
 13 and ask a few more questions just to fill in
 14 some additional details about when and where
 15 you got the devices, okay?
 16 A. Yes.
 17 Q. Okay. When did you first learn that your
 18 father had died?
 19 A. September 30th, 2018.
 20 Q. Okay. And when you -- when you learned of
 21 his death -- and -- and I'll say for the
 22 record, I'm -- I'm sorry for your -- for the
 23 loss.
 24 When you learned of your father's death,
 25 did you contact your mother?

21

1 A. Yes.
 2 Q. Did -- did you go to visit her then?
 3 A. Yes.
 4 Q. Okay. And -- and did you go to visit her in
 5 Raleigh at the Springmoor apartment in
 6 October 2018?
 7 A. Yes, I did.
 8 Q. And at that time when you were there at the
 9 Springmoor apartment in Raleigh in October
 10 2018 visiting your mother, did -- did you
 11 go -- did you and your mother go through some
 12 of your father's things?
 13 A. There wasn't much to go through. Most of
 14 what there even was in there was what was
 15 left out, really. There were a couple of
 16 desk drawers. I -- there were a couple of
 17 keepsakes of mine that I was looking for, but
 18 one of the main reasons that I was looking
 19 was because when I walked in the door to his
 20 room, immediately I saw a keepsake of mine
 21 from my childhood, a -- a jewelry box that I
 22 had and that I had left in -- in my parents'
 23 care. And inside of it -- it was displayed
 24 prominently right under the flag that he was
 25 buried with and -- well, not with but the

22

1 flag that draped his coffin and a picture of
 2 my grandparents and inside the box was
 3 everything exactly as I had left it. So I
 4 took that to mean that I was supposed to look
 5 for other things and so I started -- I -- I
 6 thought there was a chance that there might
 7 have been something specifically for me as in
 8 a note or a message of some sort that I would
 9 find.
 10 Q. Okay. And -- and was that when you found the
 11 storage devices that we've been discussing?
 12 A. It was in that same incident, yes, that --
 13 that same evening.
 14 Q. Okay. And where in the apartment were the
 15 storage devices?
 16 A. They were on a shelf in my father's room.
 17 Q. Okay. Were they just sitting out open on the
 18 shelf?
 19 A. Yes, they were. There was a bag -- a clear
 20 plastic bag with the thumb drives and
 21 ad-sticks and then there was just a stack
 22 of -- it wasn't the only thing on the shelf.
 23 He had also some of those pullout boxes that
 24 kind of are like drawers that had some of his
 25 papers in there, and the -- the hard drives

23

1 just were there in the corner of -- it was
 2 a -- one of those kind of box-style book
 3 shelves. It wasn't just a straight shelf.
 4 Some of them had those removable drawers in
 5 them and others were just open.
 6 Q. Okay. But all of the four external hard
 7 drives and the 18 thumb drives that you sent
 8 to the plaintiffs' lawyers in response to the
 9 subpoena were on this bookshelf in your
 10 father's room in the apartment at Springmoor?
 11 A. That's right.
 12 Q. Okay. And -- and they weren't in any sort of
 13 safe or lockbox; they were -- they were just
 14 out?
 15 A. That's right.
 16 Q. Okay. Had you seen any of these storage
 17 devices before?
 18 A. Inasmuch as I could say later having looked
 19 at them and when they were done, then I was
 20 able to confirm that, yes, there were a
 21 couple of those that I recognized from when I
 22 was either staying with on short trips or
 23 living with my parents in their house in
 24 Alexandria, Virginia.
 25 Q. Okay. And -- and could you just tell me

24

1 briefly how -- how did you recognize -- what
 2 was the connection that you made to these
 3 storage devices?
 4 A. The -- one of them had that blue rubber
 5 lining around it that I recognized
 6 immediately, and I know that there could be
 7 more than one and I also know it's a
 8 removable cover, so -- but then it just -- it
 9 appeared to be really what I -- what I was
 10 looking for, really.
 11 Q. And after getting the storage devices, when
 12 did you ask your mother if it was okay to
 13 take them?
 14 A. When I noticed them, it was in a survey and
 15 I'd first come in and -- and I was a little
 16 overwhelmed with emotion when I first walked
 17 into my father's room. Excuse me. So, you
 18 know, I was sort of looking around. There
 19 was heirloom furniture all around the
 20 apartment and other -- other things that
 21 belonged to my extended family, my, you know,
 22 great-grandparents and such, so I -- I sort
 23 of took the whole thing in, had another sort
 24 of, you know, casual, brief conversation with
 25 my mother about how things had unfolded, and

25

1 it was later when I was back in there and I
 2 also said, this is -- I think he wanted me to
 3 have this jewelry box. And so I said, I'm
 4 going to take that. Is that okay? And she
 5 said, of course. And I said, I'm going to
 6 take these, too. I think that I'll find the
 7 pictures and some of the things that I'm
 8 looking for on -- on these. Can I take
 9 these? And she said, absolutely. She -- she
 10 said, I don't even know how to use them.
 11 Q. Okay. Do you know if anyone else other than
 12 you had been to your parents' apartment at
 13 Springmoor to -- to look through or -- or
 14 potentially take any of your father's things
 15 before you had gotten there?
 16 A. That was my understanding because before I
 17 took any of those things, I specifically
 18 asked my mother -- I said, he had a work
 19 laptop still, yes? She said, yes. And she
 20 said, and a work computer. And I said, okay,
 21 did Dale come and take that stuff? She said,
 22 yes, Dale took the laptop, Dale took the work
 23 computer, and Dale took everything that he
 24 wanted.
 25 Q. And -- and who is Dale?

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1 A. Dalton Lamar Oldham. That was my father's
 2 business partner, attorney. Together he and
 3 my father were Geographic Strategies.
 4 Q. Okay. And -- and you understood your mother
 5 to be telling you that Mr. Oldham had come to
 6 the apartment in Springmoor after your
 7 father's death and taken -- is -- was it a
 8 laptop and a desktop computer?
 9 A. Yes. And, again, it was a -- it wasn't clear
 10 exactly how much had -- he had taken as my
 11 father was dying that he had -- that my
 12 father had said to him, take this. I don't
 13 think my mother really remembers exactly what
 14 was there before and -- shortly before and
 15 then shortly after his -- his death.
 16 Q. Okay. Great. Thank you. Okay. So now I
 17 have some questions just about what you did
 18 after getting the devices, okay?
 19 A. Uh-huh.
 20 Q. Great. So after getting the devices from
 21 your parents' apartment in Springmoor, did
 22 you consistently hold on to them until you
 23 sent them to the plaintiffs' lawyers in
 24 response to the subpoena?
 25 A. Yes.

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1 Q. Okay. You didn't give them to anyone else
 2 for any period of time in there?
 3 A. No.
 4 Q. Okay.
 5 A. I'm sorry I laugh. It's just I was so
 6 thrilled to have some of this precious data
 7 of mine that I would not let anyone else near
 8 them.
 9 Q. Great. And did -- did you stay in Raleigh
 10 then or did -- did you eventually go back to
 11 Kentucky?
 12 A. I stayed in Raleigh for a few days that time
 13 and then I went back to Kentucky.
 14 Q. Okay. And -- and did you take the storage
 15 devices with you when you went back to
 16 Kentucky?
 17 A. Yes, I did.
 18 Q. Okay. And were you then able to look at any
 19 of the -- the actual contents of the devices?
 20 A. I looked at the content of some of them that
 21 first night in my hotel room in Raleigh.
 22 Q. Oh, okay. And did -- am I -- did you -- you
 23 connected them to a computer to be able to
 24 look at them?
 25 A. Yes. Yes. I had a -- I had -- I had a

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1 laptop with me that I use. I had found a --
 2 an appropriate cable in one -- one of my
 3 father's drawers I found a whole box of
 4 cables and one of them was the proper adapter
 5 for that -- for those external hard drives.
 6 Q. Okay. And -- and when you -- when you did
 7 connect some of the -- the storage devices to
 8 the computer to be able to look at the
 9 contents, did -- did you see any personal
 10 information in there like photographs or
 11 other personal information?
 12 A. Yes. I found specifically really what I was
 13 looking for, which were files of mine that I
 14 had -- essentially I backed them up onto my
 15 parents' computer when I was visiting them
 16 last and, actually, many times before that as
 17 I felt that it was a really good way to
 18 assure that they would be preserved because I
 19 knew that my father was not -- you know, I
 20 knew he had a tendency to -- to be, you know,
 21 careful about those things -- those kinds of
 22 things. And, yes, I found a great many
 23 photographs that I was looking for of my
 24 children and other documents that were
 25 related to my life, matters that concerned me

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1 and my children, and it was -- it was -- I
 2 felt, well, I buried this treasure and that I
 3 was getting to dig it up. I was really very
 4 excited to see those pictures again,
 5 pictures -- also some pictures of my -- of my
 6 great-grandparents and things like that that
 7 I had hoped that I would find copies of as
 8 well.
 9 Q. Got it. So -- so some of these photographs
 10 and other personal materials were things that
 11 you yourself had stored on your parents'
 12 computer years earlier when your father was
 13 still alive; is that correct?
 14 A. That's correct.
 15 Q. Okay. And -- and you -- you saw some of
 16 those materials on these storage devices?
 17 A. Yes.
 18 Q. Okay. Other than personal files like
 19 photographs, letters, et cetera, did you see
 20 data or files on the storage devices re- --
 21 that related to your father's work creating
 22 maps?
 23 A. Yes, I did.
 24 Q. Okay. And I think I asked this before, but
 25 I'll just ask it again. Before sending the

30

1 storage devices to the plaintiffs' lawyers in
 2 this case in response to the subpoena, did
 3 you change or manipulate any of the files on
 4 the storage devices that related to your
 5 father's work?
 6 A. No, I did not.
 7 Q. Okay. Am I right that at some point after
 8 getting the storage devices, you contacted
 9 someone at the organization Common Cause; is
 10 that right?
 11 A. Yes.
 12 Q. Okay. And do -- do you remember the specific
 13 person who you first contacted at Common
 14 Cause?
 15 A. I first reached out to Bob Phillips, the
 16 director, and it was in hopes that he might
 17 be able -- he and Common Cause might be able
 18 to give me a referral to find an attorney for
 19 my mother.
 20 Q. Okay. And in the course of those discussions
 21 with Mr. Phillips, did you -- did you discuss
 22 these storage devices?
 23 A. Not in that conversation, no.
 24 Q. Okay. Did Mr. Phillips connect you to
 25 someone else at Common Cause?

31

1 A. Yes.
 2 Q. Okay. And who was that?
 3 A. Jane Pinsky.
 4 Q. Did you then have discussions with
 5 Ms. Pinsky?
 6 A. Yes, I did.
 7 Q. Okay. And in the course of those discussions
 8 with Ms. Pinsky did you mention the storage
 9 devices that we've been discussing?
 10 A. Yes, I did.
 11 Q. Okay. And did -- did you offer to -- to
 12 provide the devices to Ms. Pinsky and Common
 13 Cause?
 14 A. You know, when I first brought it up it was
 15 really just kind of an anecdotal reference to
 16 a interview with David Daley that I had
 17 recently read. At the end of this interview
 18 his last statement, and it was really the --
 19 the gist of it was about the fact that the
 20 rejected districts had been sent for redraw
 21 back to my father and now he was deceased and
 22 the comment that David Daley made was, I
 23 wonder -- I -- I think that somewhere out
 24 there on a hard drive there's a gift for the
 25 state legislators.

32

1 Q. I see. And -- and am I right, Mr. Daley is a
 2 journalist, an author who covers
 3 redistricting issues?
 4 A. Yes. He --
 5 Q. Okay.
 6 A. He sort of brought it to a little bit more
 7 mainstream attention by, I don't know, making
 8 it a little more personal, personable maybe
 9 even.
 10 Q. Got it. And -- and the article that you had
 11 read by Mr. Daley was one that was discussing
 12 the -- the redraw of North Carolina's
 13 legislative districts?
 14 A. Specifically, yes. Yes. That was the first
 15 time -- I did not even know that -- I was
 16 aware of Mr. Daley's book about Operation Red
 17 Map, but I was not aware that he was actually
 18 from North Carolina and would have such a
 19 specific interest in this for that reason.
 20 Q. Got it. So -- so in these discussions with
 21 Ms. Pinsky, having read Mr. Daley's article,
 22 am I right that you -- you expressed to
 23 Ms. Pinsky that you wanted to provide the
 24 storage devices to her and to Common Cause?
 25 A. Well, I -- I sim- --

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1 THE WITNESS: Pardon?
 2 MR. SPARKS: I just want you to let him
 3 finish.
 4 A. Oh, I'm sorry.
 5 Q. Yeah. Go ahead.
 6 A. I -- I -- I simply quipped that, I have -- I
 7 have some hard drives. And we continued the
 8 discussion about that. At that time I was
 9 not aware that there was -- that one of the
 10 matters was not an appeal. I -- I was under
 11 the impression that all of the matters
 12 pending were appeals, therefore, no new
 13 evidence. I -- when I first mentioned these
 14 things, it was really from a journalistic
 15 point of view and more anecdotal. I did not
 16 presume that they had any value as
 17 evidence --
 18 Q. I see. And --
 19 A. -- per se.
 20 Q. -- did Ms. Pinsky explain to you that there
 21 is, in fact, a lawsuit relating to North
 22 Carolina's legislative districts that -- that
 23 is not on appeal yet, that is still in the
 24 trial phase?
 25 A. She did explain. I think the way she put

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1 it -- because we were discussing whether
 2 there was new evidence or no new evidence,
 3 errors of law only. So she mentioned that
 4 the case of the state legislative districts
 5 would be accepting new evidence and I said,
 6 well, I think this might be pertinent. And I
 7 didn't know if it was -- I said -- even at
 8 that time I said that I was skeptical that
 9 there was anything here that was not already
 10 disclosed after all of those. I recall
 11 personally discovery and discovery and
 12 discovery and discovery and a lot of
 13 grumbling because everyone always grumbles
 14 about discovery in civil litigation. That's
 15 my experience.
 16 Q. So when you say that this is pertinent, you
 17 mean you believed that the storage devices
 18 that you had gotten from your parents'
 19 apartment in Springmoor had files or evidence
 20 that were pertinent or relevant to -- to this
 21 litigation?
 22 A. Well, in that they -- they were clearly about
 23 redistricting and they were clearly labeled,
 24 North Carolina.
 25 Q. Excellent. After speaking to Ms. Pinsky

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1 about the devices, did she put you in touch
 2 then with the plaintiffs' lawyers in this
 3 case?
 4 A. Yes. And I wanted to clarify. This -- the
 5 conversation about these hard drives did not
 6 come up in the first of my conversations with
 7 Ms. Pinsky. That was a development later on
 8 when we were discussing how I was very
 9 frustrated about what was -- what was going
 10 on and -- with -- with my mother and I
 11 commented -- that's -- that's -- that's
 12 right. I commented on the progress that
 13 Common Cause had made with their assertions
 14 about the relative fairness of partisan
 15 redistricting and also the underlying issues
 16 that -- that sometimes are disguised, in my
 17 opinion, as simply partisan. And I sort of
 18 made that comment. I said, this is -- this
 19 is the furthest I've ever seen a plaintiff
 20 get with anything that my father drew, and I
 21 will say I also said, and the way I knew my
 22 father a decade ago, he would have looked at
 23 those maps and -- and laughed.
 24 Q. So am I understanding correctly that when you
 25 originally contacted Bob Phillips at Common

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1 Cause and then in your initial discussions
 2 with Jane Pinsky, you were not contacting
 3 them principally about these storage devices?
 4 A. No, I was not.
 5 Q. Okay. Okay. Did you say you were -- you
 6 were contacting them in hopes that Common
 7 Cause would be able to help refer you to a
 8 lawyer in connection with your -- with your
 9 mother's situation?
 10 A. Yes.
 11 MR. SPARKS: Objection.
 12 MS. SCULLY: Objection to form,
 13 mischaracterizes the witness's testimony.
 14 A. I -- I know enough about litigation and
 15 attorneys because I'm a Hofeller. I knew
 16 that bias would come into play whether or not
 17 it was admitted. My father was often
 18 concerned that he would be discriminated
 19 against for his political position and took
 20 care to know the allegiance of someone he
 21 chose to represent him. I was not familiar
 22 with this town. I did not know -- I knew
 23 that -- many of the parties that were
 24 involved in the litigation surrounding my
 25 mother. I knew they had significant

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1 allegiances here and I felt that the only
 2 party in Raleigh that would both believe me
 3 that politics was an element and would know
 4 who might be actually independent counsel for
 5 my mother --
 6 Q. Okay. And am I right that the -- the lawyer
 7 you were seeking for your mother was in
 8 connection with the incompetency proceeding?
 9 A. Correct.
 10 Q. Okay. Let's go -- go back. After you
 11 discussed the storage devices with Ms. Pinsky
 12 at Common Cause, am I right that Ms. Pinsky
 13 then connected you directly with the
 14 plaintiffs' lawyers in this case?
 15 A. That's correct.
 16 Q. Okay. And is that Mr. Speas and Ms. Mackie?
 17 A. Yes.
 18 Q. Okay. Great. And did you -- did you have
 19 conversations with them then?
 20 A. Yes.
 21 Q. Okay. And in the course of those
 22 conversations did you -- did you express that
 23 you wanted to provide the storage devices
 24 that you had gotten from the apartment in
 25 Springmoor to them?

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1 A. Yes.
 2 Q. Okay. Then in February of -- of 2019 did you
 3 receive the subpoena from plaintiffs and
 4 that's when you sent the storage devices?
 5 A. Yes.
 6 Q. Okay. Did you tell anyone that you object to
 7 the subpoena or that you object to providing
 8 a response to the subpoena?
 9 A. No.
 10 Q. Okay. Did you, in fact, have any objection
 11 or problem with the subpoena or with
 12 providing a response to the subpoena?
 13 A. No, I didn't.
 14 Q. Okay. Did anyone else tell you that they
 15 object to the subpoena?
 16 A. No.
 17 Q. Did anyone else tell you that they had any
 18 objection or problem with you providing a
 19 response to the subpoena?
 20 A. No.
 21 Q. Did you -- did you ever speak to your mother
 22 about the subpoena?
 23 A. Yes, I did.
 24 Q. Okay. And did you tell her that you were
 25 going to respond to the subpoena?

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1 A. Yes. And because there were files that
 2 belonged to her, I asked for her permission
 3 also. I said -- she said that she had no
 4 problem with that. She also felt, as I did,
 5 that the process would most likely be
 6 centered around provably pertinent files
 7 anyway, but that -- I -- I reassured her -- I
 8 assured her, I should say, that she should be
 9 aware that once you -- and, again, this is
 10 something my father taught me. Once you let
 11 go of it, you don't have control of it
 12 anymore so you can't be guaranteed what will
 13 and won't be disclosed, so it's something you
 14 should be prepared for when you are involved
 15 with discovery.
 16 Q. Okay. And in the course of that discussion
 17 with your mother, did you understand that
 18 your mother was giving you permission or her
 19 okay to --
 20 A. Yes.
 21 Q. -- to -- let me -- let me finish the
 22 question.
 23 A. I'm sorry.
 24 Q. That's okay. I'll just -- I'm just going to
 25 ask it again, okay?

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1 A. (Nods head).
 2 Q. So in the course of that discussion with your
 3 mother about the subpoena, did you understand
 4 that she was giving you her permission or her
 5 okay to provide the storage devices that
 6 we've discussed to the plaintiffs' lawyers in
 7 response to the subpoena?
 8 A. Yes.
 9 Q. Okay. Thank you. Okay. I just have a -- a
 10 few other questions and I -- I did want to
 11 ask you just a couple of questions about your
 12 relationship with each of your parents. And
 13 I -- and I don't intend to pry, but -- but
 14 I'll just ask a couple of basic questions if
 15 that's okay.
 16 A. That is okay, yes.
 17 Q. Okay. Would -- would you say that you had a
 18 positive relationship with your father in
 19 recent years?
 20 A. Not in recent years, no.
 21 Q. Okay. When was the last time you spoke to
 22 your father before his death last year?
 23 A. July of 2014.
 24 Q. Okay. Would you say that you have a positive
 25 relationship, a functional relationship, with

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1 your mother?
 2 A. Yes.
 3 Q. Okay. Do you know whether an official estate
 4 was opened for your father after his death?
 5 A. No. That has been a confused issue.
 6 Q. Okay. So when you say no, you --
 7 A. I --
 8 Q. -- the answer is, no, you don't know?
 9 A. Exactly.
 10 Q. Okay. That's fine. Did you send these
 11 storage devices to the plaintiffs' lawyers in
 12 this case to -- to get back at your father or
 13 to spite your father for personal reasons?
 14 A. Not at all.
 15 Q. Okay. Could you just tell me briefly in your
 16 words, why did you want to provide these
 17 devices to the plaintiffs' lawyers in this
 18 case?
 19 A. When I was expressing my skepticism that
 20 there would be anything in the way of
 21 evidence, I stated that I felt that these
 22 files would if -- certainly be of historical
 23 value, that they would give insight into the
 24 process, not any value judgment on that
 25 process. I did not have -- my political

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1 viewpoint to me seemed irrelevant to the
 2 function of census data turning into voting
 3 districts, and I really thought of it in --
 4 in those terms. I really -- I knew that if I
 5 presented them this way that they would be
 6 preserved, that they -- their integrity would
 7 be preserved and everything there, including
 8 my files, including other matters completely
 9 unrelated to this, that those -- that that
 10 would be a snapshot in time.
 11 Q. Was -- was there any financial benefit to you
 12 personally from providing these files to the
 13 plaintiffs' lawyers? Did you -- did you make
 14 any profit here?
 15 A. No.
 16 Q. Okay.
 17 MR. JONES: Can we go off the record,
 18 take a five-minute break?
 19 THE WITNESS: Sounds great.
 20 THE VIDEOGRAPHER: Going off the
 21 record. The time is 10:24 a.m.
 22 (Whereupon, there was a recess in the
 23 proceedings from 10:24 a.m. to 10:46 a.m.)
 24 THE VIDEOGRAPHER: Going back on the
 25 record. The time is 10:46 a.m.

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1 MR. JONES: Thank you. Ms. Hofeller, I
 2 have no more questions for you today. Thank
 3 you for your time.
 4 THE WITNESS: My pleasure.
 5 EXAMINATION
 6 BY MS. SCULLY:
 7 Q. Ms. Hofeller, Elizabeth Scully. We met
 8 earlier this morning. I represent the
 9 legislative defendants in this case and I do
 10 have some follow-up questions that I would
 11 like to ask of you today.
 12 First, if I could turn your attention to
 13 the document that was marked as Exhibit 2
 14 that you went through with counsel for the
 15 plaintiffs earlier. Looking at -- at the --
 16 at the first page where there's a photograph
 17 of a -- of a box and then appears to be
 18 handwriting for -- addressed to Arnold &
 19 Porter.
 20 Do you see that there?
 21 A. I see the handwriting behind the box.
 22 Q. Uh-huh.
 23 A. Yes.
 24 Q. Is that your handwriting?
 25 A. No.

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1 Q. No. Do you know whose handwriting that is?
 2 A. No.
 3 Q. Did you personally prepare the box, label it,
 4 put the contents in the box and send it to
 5 Arnold & Porter?
 6 A. I put the contents in the box, I sealed the
 7 box, and at the FedEx office the label was
 8 printed out and put on it in front of me.
 9 Q. Okay. Did you send the materials directly to
 10 Arnold & Porter or to a vendor before you
 11 sent them to Arnold & Porter?
 12 A. I sent them directly to Arnold Porter.
 13 Q. Did you ever send the materials to a -- a
 14 vendor?
 15 A. No.
 16 Q. Turning to the -- it's marked Number 4 in
 17 Exhibit Number 2.
 18 A. Okay.
 19 Q. You have that in front of you?
 20 A. I do.
 21 Q. And it appears on Page Number 4 of Exhibit
 22 Number 2 is a picture of a thumb drive. Do
 23 you see that?
 24 A. I do.
 25 Q. And on that thumb drive there are some

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1 drawing -- a handwritten drawing on that
 2 thumb drive. Do you recall what material was
 3 contained in this thumb drive?
 4 A. Are -- are you -- please clarify the -- the
 5 handwriting being the A as opposed to the
 6 label on the drive, which is etched into the
 7 metal, I believe.
 8 Q. Well, let me -- let me back up and ask you
 9 this: Do you know -- on this document on the
 10 fourth page there appears to be two
 11 photographs. Both appear to reflect a thumb
 12 drive. Do you know if these are two
 13 different thumb drives or one thumb drive?
 14 A. I believe that is the two opposite sides of
 15 the same thumb drive.
 16 Q. Do you know that for a fact or is that
 17 just -- you're making an assumption?
 18 A. I am making an assumption.
 19 Q. Do you know if you in -- if you ever reviewed
 20 the information that was on this thumb drive
 21 that appears on Page 4 of Exhibit Number 2
 22 that you sent to Arnold & Porter?
 23 A. I know that I reviewed all of the drives that
 24 I sent to -- to Arnold Porter. I do not
 25 recall what was on which storage device.

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1 Q. Did you review all of the drives that you
 2 sent to Arnold & Porter during the same day?
 3 A. Yes. Yes. Maybe perhaps I had to take a
 4 break overnight, but it was -- I -- I made
 5 sure that I was not including anything that
 6 was mine that wasn't, you know, related to
 7 this at all, that I hadn't mistakenly mixed
 8 anything in, that these were all just the
 9 files and things that had come from my
 10 father's apartment. So that -- that's about
 11 the extent of it.
 12 Q. So if I understand you, if you found
 13 materials on the -- in any of these thumb
 14 drives or drives that you thought were yours
 15 or your personal information, you removed
 16 that information before you sent it to
 17 Arnold & Porter?
 18 A. No.
 19 MR. JONES: Objection. That
 20 mischar --
 21 THE WITNESS: Oh, I'm sorry.
 22 MR. JONES: -- mischaracterizes the
 23 testimony.
 24 MS. SCULLY: I -- I believe --
 25 MR. FARR: He asked -- she asked the

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1 question so she can answer it.
 2 MR. SPEAS: Tom, how many people are
 3 representing your side in this deposition?
 4 MR. FARR: Three.
 5 BY MS. SCULLY:
 6 Q. I believe you testified earlier that when you
 7 looked through the materials you took from
 8 your father's room that you did find
 9 information on those electronic files that
 10 were personal to you, correct?
 11 A. That is correct.
 12 Q. Did you produce that personal information
 13 when you sent the electronic materials to
 14 Arnold & Porter?
 15 A. Yes, I did.
 16 Q. A moment ago when you said you looked through
 17 the electronic files before you produced them
 18 to Arnold & Porter to make sure that nothing
 19 that related only to you or that wasn't
 20 relevant -- you wanted to make sure that
 21 wasn't being produced, what did you mean by
 22 that?
 23 A. That wasn't what I said. What I said is I
 24 checked them to make sure that they were my
 25 father's, that I hadn't mistakenly grabbed

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1 something from my own room, a storage device
 2 that I would keep, use with my phone, with my
 3 laptop, completely unrelated to this, never
 4 having been touched by my father. That's
 5 what I meant.

6 Q. Okay. Thank you for that clarification. How
 7 many hours did it take you to go through and
 8 review the entire contents of the materials
 9 that you provided to Arnold & Porter?

10 A. And please -- I would like to clarify that I
 11 did not open every file. I merely observed
 12 that this was the media that I thought it was
 13 when I arrived at my home. So it was, oh,
 14 two, three hours, I think, making sure. Some
 15 of them, you know, I -- they didn't light up
 16 at first. I had to put them in the other USB
 17 drive, reseat the connectors. Some -- some
 18 of them took -- some of them were slower than
 19 others to open, but I would say that I had
 20 made sure that -- done that last check before
 21 putting it in the mail that I knew what I was
 22 sending and that it was all what I was
 23 asserting it was, and I think that process
 24 took, yeah, maybe about two or three hours.

25 Q. Do you know how many files you opened during

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1 those two to three hours?

2 A. During those two to three hours I didn't open
 3 any of the files. I merely looked in the
 4 basic root folders on each to confirm what it
 5 was and that it had belonged to my father
 6 really was the point. The files on all of
 7 these that were mine specifically as in
 8 photographs I took, letters I wrote, those I
 9 had looked at early on. My interest in these
 10 drives initially was only for those. I
 11 ignored everything else for a period of time.

12 Q. When you took these files from your father's
 13 room and spoke to your mother about it,
 14 you -- in that conversation with your mother
 15 you told her you were taking the files
 16 because you wanted to look through the files
 17 to find personal things related to you,
 18 photographs that may be on the files,
 19 correct?

20 A. That's correct.

21 Q. And with that understanding your mother gave
 22 you permission to take the files, correct?

23 A. I did not feel that my mother's permission
 24 for me to have these was conditional on
 25 anything. When she gave me permission to

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1 take them, it was -- maybe I mentioned that I
 2 was excited about the possibility that there
 3 would be pictures of my children, but she
 4 said, they're yours. Take them. I don't
 5 have any use for them.

6 Q. And when you had that initial conversation
 7 with your mother, you had no discussions with
 8 her and expressed no interest in looking
 9 through to find any of your father's business
 10 records or materials he may have created in
 11 connection with his work as -- as an expert
 12 in other litigations, correct?

13 A. Correct. As a matter of fact, I went to the
 14 point of making sure that I asked my mother
 15 that all of his specifically work-related
 16 material had already been collected. I
 17 didn't wish to assert myself in -- in --
 18 in -- into the business intentionally.

19 Q. At some point you say when you were -- well,
 20 when you first took the -- the files, did
 21 you -- you didn't know what was on these
 22 files when you first took them, correct?

23 A. Some of them I didn't. The backups that I
 24 recognized from my parents' home PC back in
 25 Alexandria -- I was at least vaguely familiar

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1 with what had been on my parents' home PC
 2 when I was there, so those were pretty much
 3 as I expected them. And then I -- my thought
 4 was that I would at least look at everything
 5 and see what it was.

6 Q. Now, you said you went to your mother's home.
 7 It was sometime in October 2018. Do you know
 8 specifically when you were -- went to your
 9 mother's home and took these files?

10 A. October 11th.

11 Q. And how do you know it was October 11th?

12 A. I have had to recount the details of my
 13 arrival at my mother's house several times
 14 over the past few months, so it's become
 15 pretty -- pretty normal.

16 Q. Do you have any documents that reflect when
 17 you were in North Carolina?

18 A. Documents. I don't think so, no.

19 Q. Did you go to any restaurants, make any
 20 credit card charges, purchase gasoline near
 21 your mother's apartment, any type of document
 22 that would indicate the time period when you
 23 were visiting with your mother?

24 A. I believe that receipts would reflect that I
 25 was in Raleigh during certain days.

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1 Q. How long did you stay -- did you stay with
 2 your mother at that time?
 3 A. Not at that time. At that time I stayed in a
 4 hotel and I stayed for, I believe, around
 5 four days. I think -- I don't honestly
 6 recall off the top of my head if it was three
 7 nights or four nights.
 8 Q. Was the hotel located in Raleigh?
 9 A. Yes.
 10 Q. What was the name of the hotel where you
 11 stayed?
 12 A. I stayed one night in a hotel, the name of
 13 which I don't recall because I didn't like
 14 it. So then I moved to the La Quinta, I
 15 believe, yes --
 16 Q. And how --
 17 A. -- near Crabtree.
 18 Q. And how did you pay for your stay at the
 19 La Quinta?
 20 A. I paid -- I think the first night I paid cash
 21 and the next night I paid with my debit card.
 22 Q. And you get monthly statements of your debit
 23 card?
 24 A. I think I've gone paperless.
 25 Q. Do you receive e-mails of -- notification of

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1 your debit card statement --
 2 A. Yes.
 3 Q. -- when it's available?
 4 A. Yes.
 5 Q. And your debit card is held with what bank?
 6 A. PNC.
 7 Q. After you took the materials from -- from
 8 your father's room, when did you first begin
 9 to look through the materials?
 10 A. That same evening.
 11 Q. When you stayed at the hotel that you don't
 12 recall the name of?
 13 A. Yes.
 14 Q. And how many -- well, did you review one
 15 device? How many devices did you review that
 16 night?
 17 A. That first night I stuck with the one because
 18 that's where I found hundreds of pictures of
 19 me with my infant children.
 20 Q. And was the one a thumb drive or was it a
 21 hard drive, if you remember?
 22 A. An external hard drive.
 23 Q. When looking through this one external hard
 24 drive on that first night, did you also find
 25 materials that appeared to be related to your

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1 father's business work with his partner, Dale
 2 Oldham?
 3 A. I noticed, as was standard on my father's
 4 home PC, there would -- there was usually at
 5 least a folder related to his work. I was
 6 accustomed to not really paying much
 7 attention to the specifics. I talked to him
 8 about things. I didn't need to poke.
 9 Q. And when you noticed that there were folders
 10 on this hard drive that you reviewed related
 11 to your father's work and knowing that Dale
 12 Oldham had taken efforts to try to reclaim
 13 business records, did you go back and tell
 14 your mom, you know, we still have information
 15 related to Dad's work?
 16 A. My father always had information related to
 17 his work on the personal hard drive. It
 18 wasn't noteworthy.
 19 Q. Does that mean you did not go back and tell
 20 your mom that there was information related
 21 to his work on the hard drive that you had?
 22 A. At some point when I discussed the fact that
 23 they might be of interest to the case, I --
 24 again, with my mother there are some things
 25 because she's my mother that don't need to be

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1 explicitly stated. She assumed that there
 2 would be at least some work-related material
 3 on the hard drive. I discussed with her the
 4 nature of this litigation and, again, such
 5 similar litigation was a regular fixture in
 6 my entire life living with my father. So the
 7 idea that there would be some litigation
 8 going on around things that he had drawn was
 9 just par for the course. So, yes, I don't
 10 know that I would have explicitly said,
 11 Mother, there are these kinds of files on
 12 this. It was more like, Common Cause may
 13 have an interest in these work files. And
 14 even I -- with her I even discussed my belief
 15 that this would not -- these all being
 16 backups, that this would not be any
 17 information that was not already known and
 18 had already been disclosed. There were files
 19 that were titled, Discovery, so I assumed
 20 that those had gone previously into
 21 discoveries that had already happened.
 22 Q. From your answer I'm still not clear whether
 23 you actually had a conversation with your
 24 mother about your father's business records
 25 that you discovered on the external hard

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1 drives.

2 Did you have a specific conversation

3 with your mother to tell her that you

4 identified business records of your father's

5 on these external hard drives that you had

6 taken possession of?

7 MR. JONES: Objection, asked and

8 answered.

9 A. All of those points were at some point

10 mentioned. My mother was aware of the fact

11 that the interest -- the subpoena for these

12 hard drives was, in fact, for work-related

13 files only. So not only was it clear to her

14 that there were work-related files, but it

15 was clear to her that the lawyers that would

16 be looking at it on either side would not be

17 looking at anything other than my father's

18 work-related files.

19 Q. When did you first begin discussing with your

20 mother the fact that Common Cause may have an

21 interest in your father's work files?

22 A. My -- wow. She and I were discussing the

23 matter of this pressing issue of hers. Most

24 of our discussions about Common Cause in

25 those first two months were just about how

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1 nice it was that they had given us some

2 referrals.

3 Q. When you say your discussions in those first

4 two months, you mean -- what -- what time

5 period do you mean?

6 A. That would have been October and November.

7 Q. Of 2018?

8 A. Correct. I'm sorry. Yes.

9 Q. So October/November 2018 your discussions

10 with your mother are focusing on the

11 referral -- attorney referral you received

12 for her and on the --

13 A. And her case, really.

14 Q. And her case?

15 A. All of it as it may be related to the

16 unfortunate politicizing of our family life.

17 Q. And when you say her case, I believe you

18 testified earlier that the case you're

19 referring to was a petition to have your

20 mother found incompetent, correct?

21 A. Yes.

22 Q. You are aware that there was an interim order

23 entered and your mother had a guardian over

24 her estate and over her person appointed,

25 correct?

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1 A. I'm aware.

2 Q. Do you know the time period in which that

3 occurred?

4 A. November. Early November.

5 Q. October/November your conversations with your

6 mom with respect to Common Cause are focused

7 on how they'd helped her identify an

8 attorney. Who was that attorney that they

9 helped her identify?

10 A. I was referred to Allan From, who explained

11 that he didn't handle specifically those

12 matters and referred us to Douglas Noreen.

13 Q. At what point in time did you discuss with

14 your mother the possibility of turning over

15 your father's business records to Common

16 Cause or to Arnold & Porter?

17 A. The subpoena. That -- that would be when we

18 specifically discussed that.

19 Q. Did you --

20 A. I think I might have quipped about that David

21 Daley article way back in October when I was

22 looking at those hard drives recalling that

23 comment, somewhere out there on a hard drive.

24 Q. Did you --

25 A. I made a joke about that. I wasn't really,

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1 you know, saying, look at those hard drives.

2 Well --

3 Q. Did you have --

4 A. Dale got all the good stuff. Sorry.

5 Q. Did you have a conversation with your mother

6 about the possibility of turning over your

7 father's business records to Common Cause or

8 Arnold & Porter before you received the

9 subpoena?

10 A. I think that I did -- the -- did -- she was

11 also curious about the case and I had said

12 that I was -- I think I shared with her on

13 that moment when I -- when I realized --

14 maybe around that same day when I realized

15 that this wasn't strictly appeal, that --

16 that there had been a new -- a new matter

17 opened. And she never really was all that

18 familiar with the details and, to be honest,

19 I'm no expert on redistricting either. I

20 really only felt that I was uniquely informed

21 about my father as a person and perhaps his

22 process, his -- his creative process, his --

23 his political philosophy. Those kinds of

24 things I felt that I was perhaps -- that I

25 possessed some unique understanding of the

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1 man, but my mother was not -- my mother has a
 2 career of her own so her interest was really
 3 more incidental, just as much as anyone in --
 4 in -- in the public -- the general public
 5 might be interested in the political process.
 6 Q. You testified earlier that you understood
 7 your father had a business and a business
 8 partner, Dale Oldham, correct?
 9 A. Correct.
 10 Q. And you understood that your -- your father
 11 and Mr. Oldham in their business were
 12 retained and engaged as experts in
 13 litigations over the years, correct?
 14 A. That's correct.
 15 Q. You testified you're familiar with civil
 16 litigation earlier, correct?
 17 A. Yeah, and specifically with litigation on the
 18 matters of the concern of the people.
 19 Q. You understand that in connection with your
 20 father's work as an expert consultant that
 21 there are materials that he prepares as an
 22 expert that are privileged materials --
 23 MR. JONES: Ob- --
 24 BY MS. SCULLY:
 25 Q. -- materials that he prepares on behalf of

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1 the clients he's been retained to be an
 2 expert for, correct?
 3 MR. JONES: Objection, calls for a
 4 legal conclusion. The witness is not a
 5 lawyer.
 6 A. None of the materials were labeled
 7 privileged.
 8 Q. Do you have -- do you believe that you have
 9 the appropriate training or skills to
 10 determine whether the materials on your
 11 father's hard drives contained privileged
 12 information?
 13 A. All of the attorneys I've ever worked with if
 14 they were concerned about protecting
 15 privilege have pretty bold letters that said,
 16 the following contains privileged
 17 attorney-client communication and the
 18 proceeding contains privileged
 19 attorney-client communications. In that I
 20 can read when something says that it's
 21 privileged, I'm qualified. But, no, beyond
 22 that, I think if -- if -- if I just stumbled
 23 into a client's file, I would not be able to
 24 say which was and wasn't privileged, no.
 25 Q. You do not have a law degree, correct?

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1 A. That is absolutely correct.
 2 Q. You have no legal training, correct?
 3 A. No formal training.
 4 Q. You've never worked --
 5 A. Just on the street. I'm sorry.
 6 Q. You've never been employed or worked in a law
 7 firm, correct?
 8 A. I believe that I've done temp work as a
 9 receptionist for law firms but nothing --
 10 nothing noteworthy in that it would pad my
 11 CV.
 12 Q. You have never made any determinations or
 13 been asked by anyone to make any
 14 determinations about whether something is a
 15 privileged document or not, correct?
 16 A. No. That's correct. I mean, I have not been
 17 ever asked by anyone to do that, no.
 18 Q. Other than seeing a document marked as
 19 privileged, you have -- you've testified you
 20 don't know and haven't -- you don't have the
 21 skills to determine whether a document is a
 22 privileged document or not if it doesn't
 23 reflect privileged on the document itself?
 24 A. Well, you know, if it was civil litigation
 25 concerning personal matters, then I think I

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1 would assume privilege, but considering that
 2 this is a public matter and it's -- this is
 3 a -- this is a -- my understanding of -- of
 4 political philosophy and the founding of this
 5 republic is that this is -- this concerns the
 6 people and, therefore, I would probably err
 7 in the direction of it not being privileged
 8 if it weren't marked so, if that clarifies.
 9 Q. Prior to making the production of the
 10 electronic files that you made to Arnold &
 11 Porter in response to the subpoena marked as
 12 Exhibit 1, did you engage in any sort of
 13 review to determine whether the files that
 14 you were turning over contained privileged
 15 information?
 16 MR. JONES: I'll -- I'll object. It's
 17 ambiguous, the term privilege. There are
 18 lots of privileges.
 19 A. Also, I really was -- it had already been
 20 kind of clarified that the best way to
 21 preserve the integrity of this -- of this
 22 data would be not to pick and choose. There
 23 were personal files of mine on these hard
 24 drives and I left everything exactly as it
 25 was. I did not make decisions about what did

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1 and didn't go specifically for the purpose of
 2 a historical documentation of the complete
 3 media as it was when I found it.
 4 Q. You testified that it was clarified to you
 5 that the best way to preserve this data was
 6 not to go through and make any selection or
 7 remove anything from it, just to turn all of
 8 the materials over to Arnold & Porter,
 9 correct?
 10 MR. JONES: Objection. I think that
 11 mischaracterizes the testimony.
 12 BY MS. SCULLY:
 13 Q. You can answer the question.
 14 A. Could you ask it again?
 15 Q. You testified that it was clarified to you
 16 that the best way for you to preserve the
 17 integrity of this data was to just turn over
 18 the data in its entirety to Arnold & Porter
 19 and not to go through and pick and choose or
 20 remove anything from the data, correct?
 21 MR. JONES: I'll -- I'll object.
 22 It's --
 23 A. These are theoretical --
 24 MR. SPARKS: Hold on.
 25 MR. JONES: Hold on. Hold on. Let

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1 me --
 2 THE WITNESS: Sorry.
 3 MR. JONES: I have to state my
 4 objection. So I'll object because it
 5 mischaracterizes the testimony and the use of
 6 the passive voice makes it ambiguous.
 7 MR. SPARKS: Now you can answer.
 8 A. I don't think there are any -- I don't think
 9 there are any solid lines in this. I think
 10 that there was a -- a collective attempt to
 11 maintain accuracy, maintain transparency.
 12 Q. Who clarified that for you? When you said,
 13 it was clarified --
 14 A. It wasn't clar- --
 15 Q. -- for me --
 16 A. Okay.
 17 Q. -- who was that?
 18 MR. SPARKS: Hold on a second. Please
 19 let her finish.
 20 THE WITNESS: I'm sorry.
 21 MR. JONES: Yeah. I'll --
 22 MR. SPARKS: Thank you.
 23 MR. JONES: Go ahead and -- is the
 24 question done?
 25 MS. SCULLY: (Nods head).

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1 MR. JONES: Okay. I'll object because
 2 it misclar- -- characterizes the testimony.
 3 She has not testified that anyone clarified
 4 anything for her.
 5 A. Yeah. That's --
 6 Q. You may answer the question.
 7 A. That's -- I -- yes, I was going to say
 8 exactly that. I don't recall that -- that it
 9 was -- certainly if I said clarify -- in the
 10 discussion that I had with the attorneys
 11 Caroline Mackie and Eddie Speas, there was
 12 discussion on how it would be best recognized
 13 in court as -- as -- as a -- a good chain of
 14 custody, transparency. There would be no
 15 accusation of picking and choosing, of
 16 keeping some things secret and some things
 17 not if the media were turned over to a third
 18 party in its exact state.
 19 Q. Prior to turning over the hard drives and the
 20 thumb drives to Arnold & Porter did you ask
 21 your counsel to conduct -- well, let me ask
 22 this: Did you -- did you have representation
 23 at that point in time?
 24 A. I did not or did --
 25 THE WITNESS: Were we -- were you

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1 retained yet?
 2 A. I don't -- certainly not in this matter. No,
 3 I did -- I did not have counsel at that time
 4 I don't think.
 5 THE WITNESS: Or did I?
 6 A. I don't know. I wasn't consulting with an
 7 attorney on this matter.
 8 Q. I take it from --
 9 MR. SPARKS: Do you want me to
 10 interject anything here?
 11 MS. SCULLY: No, that's all right.
 12 BY MS. SCULLY:
 13 Q. I take it from your answer that you did not
 14 seek counsel from any attorney about whether
 15 there were concerns with respect to any
 16 privileged information that may be turned
 17 over to Arnold & Porter in response to the
 18 subpoena?
 19 MR. JONES: I'll -- I'll object. I
 20 think the question is asking about
 21 communications she may or may not have had
 22 between herself and one of her lawyers, which
 23 would be privileged.
 24 BY MS. SCULLY:
 25 Q. You testified a moment ago you didn't have

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1 counsel at that point in time. I'm just
 2 clarifying that you never sought any guidance
 3 from any attorney as to whether there was a
 4 concern about turning over privileged
 5 information from your father's business
 6 records to Arnold & Porter?
 7 MR. SPARKS: And I will object to that
 8 because if she did it --
 9 THE WITNESS: It would be privileged.
 10 MR. SPARKS: -- it would be
 11 attorney-client privileged.
 12 MR. JONES: Just answer it --
 13 instruct -- instruct her not -- you should
 14 instruct her not to answer.
 15 MR. SPARKS: And don't answer, please.
 16 BY MS. SCULLY:
 17 Q. I'll ask a more general question. Did you
 18 seek any counsel prior to producing the
 19 materials in response to Arnold & Porter's
 20 subpoena?
 21 MR. SPARKS: Same objection and please
 22 don't answer that.
 23 MR. FARR: Whether -- whether she
 24 talked to an attorney is privileged? Are you
 25 saying that?

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1 THE WITNESS: I think so.
 2 MR. SPARKS: I'm sorry. Ask the
 3 question again.
 4 MR. FARR: Whether she -- whether she
 5 talked to an attorney is privileged, just the
 6 fact that she talked to an attorney?
 7 MS. SCULLY: Just the general thing,
 8 not what -- specifically what was discussed.
 9 Did she speak with an attorney.
 10 MR. SPARKS: I'm -- I'm going to lodge
 11 the same objection, yes, and give the same
 12 instruction.
 13 BY MS. SCULLY:
 14 Q. You testified earlier that you understood
 15 that your father's business partner,
 16 Mr. Oldham, had taken steps to retrieve
 17 records related to their business, correct,
 18 retrieve one of your father's computers, yes?
 19 A. Two --
 20 Q. Two?
 21 A. -- of his computers.
 22 Q. When you realized that there was information
 23 related to your father's business contained
 24 on these hard drives and thumb drives, did
 25 you reach out to Mr. Oldham to let him know

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1 that you had possession of business records
 2 of theirs?
 3 A. There have been work files on my father's
 4 home PC since we had a home PC so, no, in
 5 that I asked -- there are other matters
 6 concerning contact. Dale isn't exactly easy
 7 to get ahold of, but I specifically -- I felt
 8 that I had pretty much covered that when I
 9 asked everyone involved that knew anything
 10 about my father and/or Dale if Dale had
 11 gotten everything he wanted and the answer
 12 was yes given the fact that some of those
 13 backups are from 2009, '10, '11, and that I
 14 was in many of those times living at home
 15 using that computer as my own and those files
 16 were there.
 17 Q. You said you asked everyone involved if Dale
 18 got everything he wanted and the answer was
 19 yes. Who is the everyone involved that you
 20 asked?
 21 A. The other person that I asked -- there are
 22 two other people that I asked other than my
 23 mother. I asked my uncle -- oh, and
 24 through -- I asked my cousin and I -- I sort
 25 of tried to establish that he had come and

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1 gone. That was when my mother explained that
 2 also when Dale left with the things that were
 3 related to Geographic Strategies before my
 4 father died, that my father had given him his
 5 half of the business, which amounted to
 6 around \$300,000.
 7 Q. Who was your uncle that you asked? What's
 8 his name?
 9 A. Chris Hartsough.
 10 Q. What was his relationship with Dale?
 11 A. There -- he did not have a relationship with
 12 Dale; rather, he had been present during my
 13 parents' move from their house in Raleigh to
 14 the retirement community in Raleigh. I was
 15 interested in this move because many of my
 16 personal possessions went missing at this
 17 time. That's my -- was my principle interest
 18 in finding out what had happened.
 19 Q. And who's your cousin that you spoke with?
 20 A. Trudy Harris.
 21 Q. Did she have a relationship with Dale?
 22 A. No. None of these people had a relationship
 23 with Dale. It's just that he had apparently
 24 been there during this longer period of time
 25 when my family was helping my parents move.

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1 That's all.

2 Q. If you wanted to know if Dale Oldham had

3 gotten everything that he wanted, why not ask

4 Mr. Oldham directly himself?

5 A. Because he was a part of the litigation that

6 was ongoing with my mother. He was a -- he

7 was an opposing party in that litigation and

8 noncommunicative before that point as well.

9 I did at -- at one point attempt to reach out

10 to him to discuss my mother, but he did not

11 return my calls and resisted all of my

12 attempts to -- to talk to him.

13 Q. When did you attempt to reach out to

14 Mr. Oldham to discuss your mother?

15 A. Twice, once during the first trip to Raleigh

16 and again in the second trip to Raleigh. Oh,

17 and then we sent him notice of -- of certain

18 documents -- family documents that bore his

19 name as those documents had been changed. He

20 got notice of that as well.

21 Q. The first trip to Raleigh, was that the trip

22 in October around -- on or about October

23 11th, 2018?

24 A. Yes.

25 Q. And when was the second trip?

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1 A. That would have been shortly after. Let's

2 see. The first trip was October -- okay. So

3 I -- I believe that I was then three or four

4 days back in Kentucky, but the situation

5 was -- was serious enough that I felt I had

6 to -- to change my plans to continue my work

7 in Kentucky and actually drop everything in

8 Kentucky and come back to Raleigh to help my

9 mother. That would be -- I think I was back

10 by the 18th.

11 Q. Prior to turning over the hard drives and the

12 thumb drives to Arnold & Porter, is it

13 correct that you never communicated with Dale

14 Oldham to let him know that materials related

15 to his business with your father were being

16 turned over?

17 A. Those were my father's files. I did not

18 assume that any of them or all of them --

19 many of them were there on that hard drive

20 before Geographic Strategies existed. There

21 were files related to my father's work that

22 were there from a time when I'm not even sure

23 that Dale knew my father. I did not really

24 think of this in terms of Dale Oldham, no. I

25 thought of this in terms of my dead father

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1 and his work in -- in public service, not so

2 much about -- about Dale, honestly.

3 Q. Is that, no, you did not communicate with

4 Dale Oldham before you turned over these

5 files to Arnold & Porter to let him know that

6 there were --

7 A. I did not make --

8 Q. -- records related to --

9 THE WITNESS: Yeah, I'm sorry.

10 BY MS. SCULLY:

11 Q. -- that there were records related to his

12 business with your father that were being

13 turned over in response to a subpoena?

14 MR. JONES: Objection, asked and

15 answered.

16 MR. SPARKS: Go ahead and answer.

17 A. I didn't attempt yet again to contact

18 Mr. Oldham in advance of responding to that

19 subpoena. No, I did not.

20 Q. Did you ever attempt to contact Mr. Oldham

21 and leave any substantive message for him

22 that you had possession of --

23 A. Of my father's stuff.

24 Q. -- business records --

25 A. I'm sorry.

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1 Q. -- of records related to your father and

2 Mr. Oldham's business and that you intended

3 to turn those records over to Arnold & Porter

4 and Common Cause?

5 MR. JONES: Objection, asked and

6 answered.

7 A. I didn't.

8 Q. Turning back to Exhibit Number 2. I believe

9 you testified that you -- sitting here today,

10 you do not know what specific information is

11 contained on the thumb drive that is pictured

12 on Page 4 of Exhibit 2, correct?

13 A. That's correct.

14 Q. If I could turn your attention to Page 7.

15 And is -- do you know what this device is

16 that appears on Page 7?

17 A. It appears to be an external drive.

18 Q. Do you know what the contents were of the --

19 this external drive that appears on Page 7?

20 A. I know that that's my father's handwriting on

21 that label. Beyond that, I don't know

22 offhand.

23 Q. Do you have any specific recollection of

24 reviewing the files that are contained on the

25 hard drive that appears on Page 7 of Exhibit

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1 2?
 2 A. Not specifically that one, no. None of them
 3 specifically. They all seem to have sort of
 4 a -- a mix -- a mixture of -- of different
 5 kinds of data on different matters. All of
 6 them were mingle -- mingled.
 7 Q. Turning to Page 9, do you know what that is a
 8 picture of?
 9 A. Once again, it appears to be a picture of --
 10 of one of the external drives.
 11 Q. I take it similar to the drive that we saw in
 12 the picture immediately before that you have
 13 no specific recollection of what material is
 14 contained on this drive, correct?
 15 A. That's correct.
 16 Q. Is it fair to say that you do not have any
 17 specific recollection of what information is
 18 contained on any of the hard drives or the
 19 thumb drives that are photographed that
 20 appear in Exhibit 2?
 21 A. Well, it's very similar with all of them was
 22 my impression. So it was -- it would be very
 23 difficult to say what was on which. I mean,
 24 I don't know offhand -- like there were
 25 two -- for example, there were two drives

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1 that were identical in appearance, but they
 2 seemed to be backups of the same hard drive
 3 but at different times. So that would be
 4 very hard for me to say which was the 2011
 5 set and which was the 2013 set, for example.
 6 Q. You testified earlier when -- under your
 7 examination with plaintiffs' counsel that you
 8 recognized one of the hard drives because of
 9 the blue rubber band that was around it.
 10 A. No, the blue cover.
 11 Q. Blue cover. Turning your attention to Page
 12 15 of Exhibit 2, is that the blue -- is that
 13 a picture of the blue cover you were
 14 referring to when you testified earlier?
 15 A. It -- it -- I would assume that it is the
 16 cover that I was referring to.
 17 Q. And what did -- what is it about that cover
 18 that stood out in your mind?
 19 A. You know, this -- it wasn't an effort at
 20 precision. I just remembered that this was a
 21 cover that went typically with a brand and
 22 type of external storage device that my
 23 father liked to use. And I had a hunch -- I
 24 was hoping that it would be what it turned
 25 out to be and that is a backup of the -- my

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1 parents' personal computer, which would
 2 contain the files that I was looking for of
 3 mine.
 4 Q. In the subpoena that you received from
 5 Arnold & Porter there was a specific request
 6 looking for materials relating to the 2011 or
 7 the 2017 North Carolina redistricting. You
 8 understood that, correct?
 9 A. Yes, I -- yes.
 10 Q. Did you undertake any efforts to limit the
 11 materials that you were turning over to
 12 Arnold & Porter in response to the subpoena
 13 to only documents that related to the 2011 or
 14 2017 North Carolina redistricting?
 15 MR. JONES: I'll -- I'll -- I'll
 16 object. I think it mischaracterizes the
 17 scope of the face of the subpoena.
 18 MR. SPARKS: Go ahead and answer.
 19 A. The request was for any and all materials
 20 that might, so I -- since there appeared to
 21 be relevant -- relevant data, I -- I think I
 22 already answered this question. I think the
 23 idea was that it was going to be preserved
 24 and that I would not be deciding which files
 25 would go and which files wouldn't.

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1 Q. I take it from your answer that you did not
 2 review each hard drive and each thumb drive
 3 to confirm that each hard drive and each
 4 thumb drive, in fact, had any information
 5 with respect to the 2011 or 2017 North
 6 Carolina redistricting; instead, you just
 7 turned it over in its entirety --
 8 A. I was answering the subpoena --
 9 MR. SPARKS: Let her finish.
 10 THE WITNESS: Sorry.
 11 BY MR. SPARKS:
 12 Q. -- to Arnold & Porter, correct?
 13 A. Yes. Yes.
 14 Q. You testified earlier when you took the
 15 electronic hard drives and thumb drives from
 16 your father's home you said you were so
 17 thrilled to have precious data of yours. You
 18 said mine, but -- what precious data were you
 19 referring to?
 20 A. Pictures of me and my infant children,
 21 pictures of me on my property in West
 22 Virginia, pictures of dead friends, music
 23 recorded years ago by me and a friend who had
 24 a band together, letters that I had written
 25 to friends, letters that I wrote to my

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1 father, documents that I might have otherwise
 2 possession of if it weren't for first a house
 3 fire that destroyed everything I owned in
 4 2013 and also a divorce in which everything
 5 else that I had pretty much was, you know,
 6 left in the hands of -- of someone I didn't
 7 really feel like communicating with.
 8 Q. You didn't consider the records relating to
 9 your father's work -- redistricting work to
 10 be your data, correct?
 11 A. The hard drives were given to me by my -- by
 12 my mother, so I would say that I considered
 13 everything on those hard drives that my
 14 father had left in his room that my mother
 15 gave to me unconditionally -- I considered
 16 all of it mine at that point when it was
 17 given to me by my deceased father's wife.
 18 Q. Even if the material related to your father's
 19 business with another business partner, you
 20 considered it your material, your --
 21 A. I considered the stor- --
 22 MR. JONES: Ob- -- objection. It's
 23 been asked and answered.
 24 MR. SPARKS: Go ahead and answer.
 25 A. I considered everything that my mother gave

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1 me that had previously belonged to my father
 2 who was now dead mine, yes.
 3 Q. Did your father have a will?
 4 A. Yes.
 5 Q. Do you know if in the will there was any
 6 provision with respect to his personal
 7 property and who the personal property would
 8 be left to?
 9 A. My understanding, not being an estate
 10 attorney, is my mother was the beneficiary.
 11 Q. Have you seen a copy of the will?
 12 A. Yes.
 13 Q. Did you -- did your father make any direct
 14 gifts to you in the will?
 15 A. I don't believe he did, no.
 16 Q. Did your father in the will address anything
 17 related to his -- his business records,
 18 business files?
 19 A. I don't recall.
 20 Q. Prior to turning over the electronic files to
 21 Arnold & Porter you said you spent two to
 22 three hours immediately before turning them
 23 over to Arnold & Porter. I would like to
 24 understand how much time in total you spent
 25 reviewing the materials at any point in time

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1 before you gave them to Arnold & Porter.
 2 A. That would be difficult. Do you mean -- you
 3 know, I -- for example, I printed out copies
 4 of pictures of me and my children. Do you
 5 consider me putting those on my wall time
 6 reviewing the materials?
 7 Q. No. Time spent looking through the
 8 electronic files on a computer.
 9 A. That would be very difficult to determine. I
 10 mean, I don't know. How much time do you
 11 spend looking at pictures of your children?
 12 Q. Putting aside the amount -- well --
 13 A. I didn't spend a lot of time looking at my
 14 father's work files if that's what you're
 15 driving at. No, I didn't.
 16 Q. So let's focus on that point. Putting aside
 17 the time you spent looking through files that
 18 related to you or photographs related to you
 19 or issues that were personal to you, putting
 20 all of those personal materials aside, how
 21 much time would you estimate you spent
 22 reviewing files that related to your father,
 23 his redistricting work, his business records,
 24 any expert documents he may have created,
 25 those materials?

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1 A. Well, it's also hard because there were
 2 certain situations in some of those backups
 3 where there were folders that contained a
 4 multitude of mixed documents. In certain
 5 cases I would open something thinking that it
 6 was one thing and find that it was something
 7 different. So there were -- there were both
 8 situations where -- for example, news
 9 articles that he had in a folder of -- I
 10 believe there were a lot of -- of news
 11 articles that I actually read through that he
 12 had saved, maybe articles even that mentioned
 13 him specifically and, of course, I was
 14 interested in preserving that. Of course, I
 15 wanted, you know, a scrapbook of my father
 16 and so -- also, there were -- just looking at
 17 the file extensions and having a basic
 18 familiarity with my father's work, I knew a
 19 lot of them would be file extensions that I
 20 wouldn't even be able to open considering
 21 that I didn't have the right proprietary
 22 software. So -- wow. I really -- it would
 23 be very difficult for me to give an estimate.
 24 I don't really understand. Maybe -- I mean,
 25 not -- not to be snide, but what -- what --

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1 what -- what exactly are we driving at? How
 2 many hours I spent looking specifically at
 3 just the files in folders that contained
 4 things like, again, letters to me, old trust
 5 documents, letters that my grandfather sent
 6 to my father, and interesting stories and
 7 maybe a few photographs, some of them of my
 8 father and my relatives, some of them my
 9 father and my children, some of them me and
 10 my children? It would be -- it would be very
 11 difficult to give you an estimate of how many
 12 of those minutes were spent looking at files
 13 that were specifically related to his work,
 14 much less specifically related to which -- I
 15 mean, I wouldn't be able to distinguish the
 16 legislative maps from the congressional
 17 district maps.

18 Q. Is it fair to say that the majority of the
 19 time you spent reviewing the files was spent
 20 reviewing materials related personal to you
 21 and that, in comparison, you spent very
 22 little time reviewing files related --

23 A. Very little --

24 Q. -- to your father's --

25 A. -- is kind of a --

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1 MR. SPARKS: Hold, please.

2 BY MS. SCULLY:

3 Q. -- work? Yeah. It's a --

4 A. I'm sorry.

5 Q. It's -- my question, is it fair to say that?

6 MR. JONES: Objection, asked and
 7 answered.

8 MR. SPARKS: Please answer.

9 A. Yes.

10 MR. JONES: We've been going about
 11 an -- about an hour.

12 MS. SCULLY: We can take a break.

13 MR. JONES: Can we take a break?

14 THE WITNESS: This time I am going to
 15 smoke a cigarette.

16 THE VIDEOGRAPHER: Going off the
 17 record. The time is 11:39 a.m.

18 (Whereupon, there was a recess in the
 19 proceedings from 11:39 a.m. to 11:59 a.m.)

20 THE VIDEOGRAPHER: Going back on the
 21 record. The time is 11:59 a.m.

22 BY MR. SPARKS:

23 Q. Ms. Hofeller, you testified earlier today
 24 that Dale got all the good stuff. What did
 25 you mean by that?

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1 A. The specifically work-related stuff, the
 2 stuff that would be -- you know, the stuff
 3 that he wanted, the stuff that he felt was
 4 pertinent.

5 Q. And you said he took two computers from your
 6 father's office; is that correct?

7 A. That's what I'm told.

8 Q. You've also testified today that these hard
 9 drives and the thumb drives, you understood
 10 them to be backups, correct?

11 A. That's correct.

12 Q. Was it your understanding that your father's
 13 work-related files that they had on the
 14 computer that Dale Oldham had taken or
 15 computers that he'd taken were also backed up
 16 on any of these hard drives or thumb drives
 17 that you received?

18 MR. JONES: Ob- -- objection, calls for
 19 speculation.

20 A. Honestly, if I speculated I would speculate
 21 that any backups that had been done
 22 specifically of the work computers would be
 23 already taken by him. I did not -- I did
 24 not -- actually, the opposite. I assumed
 25 that these were personal backups because they

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1 were there with -- with those things. And,
 2 again, it's -- it's always been a little
 3 bit -- those lines have always been a bit
 4 blurry in the household.

5 MR. BRANCH: All right. I'm --

6 BY MS. SCULLY:

7 Q. Do you --

8 MR. BRANCH: -- going to remind
 9 everybody here that under the North Carolina
 10 rules, counsel's only supposed to object to
 11 the form of the question. There are no
 12 speaking objections allowed in North
 13 Carolina. This is multiple times now that
 14 the witness has changed her answer in
 15 response to a speaking objection by
 16 Mr. Jones. Now, unless I'm mistaken,
 17 Mr. Jones, you do not represent the witness.
 18 Under the rules you can object to the form of
 19 the question and that's it. You can't
 20 instruct her not to answer and she should not
 21 be changing her testimony in response to
 22 something that you articulate for her.

23 BY MS. SCULLY:

24 Q. Ms. Hofeller, do you, in fact, know one way
 25 or another if the information that was

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1 contained on the hard drives and the thumb
 2 drives that you provided to Arnold & Porter
 3 were in part duplicative of the information
 4 that was contained on the computers that Dale
 5 Oldham took possession of?
 6 A. I really don't know. I really honestly don't
 7 know.
 8 Q. Turning back to your communications with
 9 Common Cause, you testified earlier that your
 10 first outreach to Common Cause was a
 11 communication that you had with someone named
 12 Bob Phillips, correct?
 13 A. Correct.
 14 Q. When did that communication occur?
 15 A. That would have been in very -- very early
 16 November, the first week of November.
 17 Q. How many times did you speak with
 18 Mr. Phillips?
 19 A. Once.
 20 Q. Was your communication with Mr. Phillips in
 21 person, telephonic? How did you communicate
 22 with him?
 23 A. Telephonic.
 24 Q. What did you know about Common Cause when you
 25 reached out to Mr. Phillips?

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1 A. I knew that they were representing the
 2 interest of voters that felt that this
 3 redistricting represented a violation of
 4 their constitutional rights.
 5 Q. And the redistricting that you're referring
 6 to, does that include the maps that were
 7 prepared by your father, Mr. Hofeller, in
 8 North Carolina?
 9 A. Yes.
 10 Q. So you understood that Common Cause was
 11 seeking to have the redistricting maps that
 12 your father had prepared thrown out, correct?
 13 A. Yes.
 14 Q. You knew that Common Cause was antagonistic
 15 to the work of your father, Mr. Hofeller,
 16 correct?
 17 A. I didn't know that they were -- initially, I
 18 did not know that they were antagonistic to
 19 the new maps.
 20 Q. When you say the new maps, what do you mean
 21 by that?
 22 A. Well, he's drawn more than one set, so
 23 interesting to know I didn't actually know
 24 that there was a new case when I first spoke
 25 to Common Cause. I thought that this was all

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1 concerning maps that had already been
 2 redrawn.
 3 Q. You knew historically that Common Cause had
 4 been antagonistic to the work that your
 5 father had done in North Carolina, correct?
 6 A. If -- if -- if that's the way to characterize
 7 it, then, yes.
 8 Q. I believe you testified you reached out to
 9 Mr. Phillips to seek a referral for your
 10 mother. Did you communicate any specific
 11 details to Mr. Phillips about why you were
 12 looking for an attorney for your mother?
 13 A. Yes, so that I could get the right kind of
 14 attorney.
 15 Q. What -- can you share with me specifically to
 16 the best of your recollection what you said
 17 to Mr. Phillips when you communicated with
 18 him on the phone?
 19 A. That my mother was facing a challenge to her
 20 competence.
 21 Q. Did you share with Mr. Phillips who had
 22 brought the incompetency petition against
 23 her?
 24 A. No.
 25 Q. Did you share with Mr. Phillips any

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1 information about who was involved in the
 2 incompetency proceedings?
 3 A. Not specifically, no.
 4 Q. If I recall correctly, you testified that
 5 Mr. Phillips then put you in touch with Jane
 6 Pinsky?
 7 A. That's correct.
 8 Q. Jane Pinsky also works for Common Cause?
 9 A. Yes.
 10 Q. Is Ms. Pinsky a lawyer, if you know?
 11 A. I don't think she is.
 12 Q. How many times did you speak with Ms. Pinsky?
 13 A. In total I believe that we had three -- three
 14 or four conversations, all on the phone.
 15 Q. Do you know what Ms. Pinsky's title is with
 16 Common Cause?
 17 A. Not offhand, no.
 18 Q. I want to go through the three or four
 19 communications that you had with Ms. Pinsky.
 20 Do you recall the first communication you had
 21 with her --
 22 A. Yes.
 23 Q. -- the time period?
 24 A. That would have been also very early
 25 November. Sometime during the first --

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1 sometime during the first eight or nine days
2 of November.
3 Q. Was anyone else on the phone during that
4 first communication that you had with
5 Ms. Pinsky?
6 A. Not that I know of.
7 Q. Approximately how long did that first
8 communication with Ms. Pinsky last?
9 A. I'm not -- it wasn't a particularly long
10 conversation. Ten minutes, maybe -- maybe,
11 if that.
12 Q. Tell me what you recall about that
13 conversation, what you said and what she
14 said.
15 A. She had -- she -- we confirmed that this was
16 about the matter of referral and that Bob had
17 said that she would be the one that would --
18 was more familiar with the names of -- of
19 local attorneys. And she had some names for
20 me and so I took down those names, and she
21 wished me luck and expressed condolences for
22 the loss of my father and I think that was
23 about it in that first conversation, I think.
24 Q. When you first communicated with Ms. Pinsky,
25 did she give you the impression that she was

1 expecting your call? Did you make the call
2 to her?
3 A. I re- -- I think we -- I don't actually know
4 who initiated the call that was the one where
5 we actually spoke. We exchanged a few
6 messages. I got an e-mail from Bob saying
7 that he had told Jane to reach out to me and
8 then exactly what combination of who left who
9 what message, I'm not honestly sure.
10 Q. You had an e-mail communication with Bob.
11 How many e-mail communications did you have
12 with Mr. Phillips?
13 A. One. I mean, one conversation. It was, I
14 think, maybe two, maybe three messages, his
15 saying that and me saying thank you. So I
16 think was -- two, I think, was all.
17 Q. I just want to make sure I understand your
18 testimony. You had one telephone
19 conversation with Mr. Phillips and then you
20 had one e-mail with Mr. Phillips, but the
21 e-mail may have had a couple of threads
22 within it?
23 A. Recalling to my best ability, it was -- the
24 e-mail would have contained his noted that I
25 would be hearing from Jane and my thanks --

1 Q. Reply.
2 A. -- for the -- for that.
3 Q. Did you have any e-mail communications with
4 Jane Pinsky?
5 A. I think that I did, yes, because I wanted --
6 we -- we were confirming names and numbers
7 and things. Like I didn't know how do you
8 spell that and I said, can you just e-mail me
9 that? And -- and then I think it was more --
10 I think maybe one more time in e-mail --
11 she -- she really prefers the phone. We --
12 we both kind of felt that way, I think. So
13 any further e-mail was more to the -- to
14 the -- to the -- like, are you going to be at
15 the office? Can I reach you today? Are you
16 busy? That sort of thing. Like the --
17 that -- that predicated the -- a follow-up
18 phone call about those attorneys. It was
19 still pretty much exclusively on that and
20 just sort of incidentals on the topic of --
21 of what this proceeding against my mother
22 really actually was, you know, very -- I
23 didn't know much about what -- what -- what
24 was actually being asserted. It's hard to
25 explain. It wasn't really very detailed. It

1 was just kind of clarifying what kind of
2 attorney I would need, I think, really,
3 whether this is -- is this an estate
4 attorney? Is this a litigation attorney? Is
5 this -- and a lot of my questions she would
6 then say, you know, I would have to -- I
7 would have to ask an attorney what kind of
8 attorney you need for your mother, that sort
9 of thing.
10 Q. Did you share with Ms. Pinsky any of the
11 documents from the incompetency proceedings,
12 any of the legal documents --
13 A. No.
14 Q. -- court documents?
15 A. No, I don't -- no, I don't think I did,
16 actually. It didn't seem necessary or
17 appropriate since she wasn't the attorney.
18 Q. Approximately how many e-mail communications
19 did you have with Ms. Pinsky?
20 A. I think maybe a grand total of two, if two.
21 I would have to look. It may even be just
22 one thread. I hon- -- I didn't really study
23 it.
24 Q. Your first conversation that you had with
25 Ms. Pinsky in early November, first eight or

1 nine days, said lasted approximately ten
 2 minutes. Can you tell me what you recall
 3 specifically about what was discussed during
 4 that conversation, what you said to her and
 5 what she said to you?
 6 A. I don't recall specifics, no. I -- it was --
 7 I was just trying to get an attorney for my
 8 mother, so I don't remember exactly what I
 9 said on the --
 10 Q. In that first communication did she give you
 11 names of attorneys that you could reach out
 12 to?
 13 A. Yes.
 14 Q. In the first conversation that you had with
 15 Ms. Pinsky did you talk substantively about
 16 who was involved in the incompetency
 17 proceedings?
 18 A. No.
 19 Q. Did you at any point in time discuss with
 20 Ms. Pinsky who was involved in the
 21 incompetency proceedings?
 22 A. Not that I recall, no. I really said very
 23 little other than I felt that the fact that
 24 my father had so many friends and coworkers
 25 and colleagues and -- and supporters and

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1 really, frankly, people who really, really,
 2 really idolized him and -- and -- and had
 3 kind of a -- a nonhuman vision of him, and
 4 that was why I was contacting Common Cause.
 5 I didn't have any -- I wasn't expecting there
 6 to be a discussion about specific names. It
 7 seemed to me from the point of view where I
 8 was at the time that the specific names were
 9 going to have to be people in Raleigh that
 10 didn't worship my father. There was no need
 11 to -- no need to -- to -- to detail. And
 12 also I wasn't really trying to discuss the
 13 merits of my mother's matter with -- with --
 14 with Common Cause. I was only trying to
 15 really seriously just hope that I might find
 16 an attorney in Raleigh that was independent
 17 of -- of my father and -- and the people he
 18 worked for.
 19 Q. When you say independent from your father,
 20 what do you mean by that?
 21 A. I mean that in matters that concern a man as
 22 a person, often when you're dealing with
 23 people that only know him in a professional
 24 context and have a great deal of their
 25 personal and professional life mingled with

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1 that image, when you begin to speak about
 2 that person as if they were a human being
 3 with multitudes of emotions, contradictions,
 4 all of those things, often people get
 5 hostile. If you are -- if you are bringing a
 6 human image to a hero's image, they -- they
 7 sometimes feel that maybe they -- they get
 8 angry.
 9 Q. How did your father's work in redistricting
 10 relate, if at all, to the incompetency
 11 proceedings that were ongoing with respect to
 12 your mother?
 13 A. Many people who only knew my father
 14 incidentally or knew him only in one context
 15 were resisting the assertion that I had that
 16 perhaps my mother and I would know better
 17 what it was that my father wanted that was
 18 not specifically spelled out. There was a
 19 lot of speculation about what your father
 20 wanted coming from a variety of sources, some
 21 people that really didn't know him very well
 22 outside of the context of work, and it was,
 23 frankly, a little bit offensive.
 24 Q. You did not have any conversations with your
 25 father regarding what he wanted to have

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1 happen with his work related to redistricting
 2 upon his death, did you?
 3 A. I don't believe I -- I don't believe I ever
 4 had a conversation with my father about what
 5 he wanted to have happen after his death
 6 pertaining specifically to his work. I think
 7 he felt that once he was dead, that his work
 8 to him at least would be no longer relevant.
 9 Q. What led you to that belief?
 10 A. He often would say that that was -- you know,
 11 if you're going to divide people into -- into
 12 camps of how they view death, my father
 13 would, whether he was sincere or not, he
 14 would often say, you know, sometimes
 15 jokingly -- I don't know how well you knew
 16 him, but he -- he had a -- he had a penchant
 17 for irony and he would often say, well, it
 18 won't matter once I'm dead, right? So -- he
 19 also said things like, I know that people on
 20 their deathbed very rarely look up and say, I
 21 wish I'd spent more time at work.
 22 Q. At what point in time did you discuss with
 23 Ms. Pinsky that you had some of your father's
 24 hard drives that you thought might be of
 25 interest to Common Cause?

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1 A. That would have been sometime in December.
 2 That was later. She -- she called me to ask
 3 how things were going with my mother because
 4 I also -- one of the things that I -- that
 5 comes -- that was coming pretty clear to
 6 anyone who talked to me in that time is there
 7 was a lot of -- there was a lot of emotion
 8 regarding the then still very recent death of
 9 my father and that it was -- it was sad that,
 10 you know, the principle concern about him,
 11 his life, and everything having to do with
 12 him was this -- this matter rather than the
 13 matter of his family.
 14 Q. How many conversations did you have with
 15 Ms. Pinsky about your father's hard drives
 16 and electronic materials that you had?
 17 A. I'm sure -- pretty -- pretty sure it was only
 18 one because she said that she really would
 19 not be certain -- I mean, really, that was
 20 it. I said -- we -- we had that
 21 conversation. She said, I'll ask the
 22 lawyers. And I think then any further
 23 conversation at all about those -- that media
 24 was had with the attorneys.
 25 Q. When you say Ms. Pinsky said, I'll ask the

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1 lawyers, was that in response to a question
 2 you asked her? What do you mean by that?
 3 A. That was not a response to a specific
 4 question. That was a response to the
 5 conversation that had begun with me
 6 mentioning the David Daley interview and
 7 saying, I have hard drives. And in the
 8 context of that article he had -- David Daley
 9 had implied that those hard drives would have
 10 maps that the state legislators would like.
 11 I, once again, didn't really think that it
 12 was anything, you know -- I don't know how to
 13 describe it. I --
 14 Q. Do you -- do you have an understanding of
 15 which lawyer she was referring to when
 16 Ms. Pinsky said, I'll ask the lawyers?
 17 A. The -- the lawyers who were involved in this
 18 matter since we were discussing whether or
 19 not there would be any use -- any
 20 admissibility. Again, I thought -- I wasn't
 21 even sure that -- I didn't even understand --
 22 at that moment when I spoke to her the first
 23 time about it and mentioned that article, I
 24 was under the impression that everything in
 25 this matter was on appeal so I wasn't

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1 thinking of it in terms of -- of evidence for
 2 any case. I was thinking of it more just as
 3 a -- an archival -- an academic interest.
 4 Q. When did you come to the understanding that
 5 this action in which you received the
 6 subpoena is still at the trial level and not
 7 on appeal?
 8 A. Actually, what's funny is that I was -- I was
 9 a little bit confused and, again, other
 10 matters were really, really pressing
 11 throughout, so I wasn't spending a lot of
 12 time studying what was going on with this. I
 13 had somehow gotten the impression that this
 14 already was in appeal, but for some reason
 15 this was -- because it was going to the lower
 16 court that it wasn't. I -- I just -- you
 17 know, I'm used to lawyers saying things.
 18 Okay, all right, whatever. I didn't even
 19 know -- I just thought it was a certain type
 20 of appeal that I wasn't even familiar with.
 21 I didn't actually understand completely that
 22 this was a new matter until it was said so
 23 like about a week ago. I -- I just -- all I
 24 knew -- all I knew for certain was that
 25 unlike the congressional districts that are

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1 at the U.S. Supreme Court, this matter
 2 would -- that new evidence would be allowed.
 3 That was what was clear.
 4 Q. How did you come to that understanding?
 5 A. Because the -- because that first
 6 conversation that -- on the matter -- I think
 7 Jane mentioned that there might be. I think
 8 might be. And, again, she was always saying,
 9 you know, I'm not -- you know, I would have
 10 to confirm that with the attorneys as a, you
 11 know, good public servant.
 12 Q. What was Jane having to confirm with the
 13 attorneys?
 14 A. That there would be -- that -- that the --
 15 that the hard drives would be potential --
 16 potentially usable as evidence in that the
 17 matter was open in that regard. I just,
 18 again, initially felt that Common Cause,
 19 being not directly affiliated with my father,
 20 would be a good -- literally like a
 21 repository for the information that I felt
 22 had historical value beyond any partisan
 23 interest but, rather -- I even used the words
 24 insight into the process -- the literal
 25 process because I -- I -- again, I'm not an

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1 expert on redistricting, but I have worked in
 2 political demographics and I have alongside
 3 my father -- you know, he studied political
 4 philosophy in general. So the -- the
 5 academic interest in this was -- was
 6 paramount to me even above any other
 7 potential. I did -- I'm not a North Carolina
 8 resident. I'm not a North Carolina voter. I
 9 have no personal concern about what happens
 10 in this case beyond the fact that this
 11 would -- this -- this man was my father and
 12 my mother was being -- being -- having a -- a
 13 very unpleasant procedure in a town that was
 14 not our home where the only people we even --
 15 that she even knew were people that had been
 16 working with my father.
 17 Q. I believe you testified that Jane mentioned
 18 there might be some use for your father's
 19 materials as evidence, correct?
 20 A. She did not put it in terms of use as
 21 evidence. She simply stated that the matter
 22 in the lower house was not a closed matter as
 23 far as evidence was concerned. I think
 24 that -- I don't remember her exact words, but
 25 there was no implication in that that there

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1 would be a literal use, just that there's
 2 even a possibility that new evidence could be
 3 heard on this matter at all.
 4 Q. So you did understand based on your
 5 communications with Ms. Pinsky that there was
 6 a possibility that this information might be
 7 useful in the matter, correct?
 8 A. Yes.
 9 Q. And --
 10 MR. SPARKS: I need to clarify one
 11 thing. I'm sorry. You said lower house.
 12 Did you mean lower court?
 13 THE WITNESS: Lower court, yes. I'm
 14 sorry.
 15 MR. SPARKS: Go ahead.
 16 BY MS. SCULLY:
 17 Q. And the party you were producing the
 18 information that might be useful to was on
 19 the opposite side from the work your father
 20 had done, correct?
 21 MR. JONES: Objection, asked and
 22 answered.
 23 MR. SPEAS: That's not a --
 24 A. I understood that Common Cause was
 25 representing the voters.

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1 Q. Did Ms. Pinsky put you eventually in
 2 communication with any of the attorneys in
 3 this litigation?
 4 A. Yes.
 5 Q. Did you initiate the communications with any
 6 of the attorneys in this litigation?
 7 A. No.
 8 Q. Who did you first speak with as an attorney
 9 in this litigation?
 10 A. I got a text from Eddie Speas.
 11 Q. Do you still have a copy of the text message
 12 you received from him?
 13 A. I don't.
 14 Q. When did you receive the text from him, if
 15 you recall?
 16 A. Shortly after that conversation with Jane. I
 17 believe that was December. I'm honestly -- I
 18 really -- I didn't -- the phone that I was
 19 using was running out of storage so it was --
 20 it was kind of -- you know, the phones will
 21 tend to dump those text messages. There was
 22 really no way for me to -- to track it back
 23 to exactly when.
 24 Q. So you believe it was sometime in December
 25 2018 you received a text message from Eddie

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1 Speas, Jr. -- 2018, thank you, correct?
 2 A. Yes.
 3 Q. What do you recall the text message saying?
 4 A. Intro -- he introduced himself and -- and
 5 basically said that -- I don't remember exact
 6 words. More like, Jane said you might be
 7 willing to -- to speak to us, something along
 8 those lines, and basically asking permission
 9 for contact and doing what is now polite in
 10 business and -- if you have a cell phone, you
 11 introduce yourself over text so that if he
 12 were to call again, I would know what that
 13 number was.
 14 Q. Did you respond to the text message?
 15 A. Yes.
 16 Q. How did you respond?
 17 A. Yes. I don't know if I said more than just
 18 yes. Maybe something polite just to -- to
 19 make it not so terse, but --
 20 Q. You responded via text; is that correct?
 21 A. Yes, I did.
 22 Q. Approximately how many text communications
 23 have you had with Mr. Speas?
 24 A. Not very many. There -- it was really more
 25 just an effort to schedule phone calls.

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1 Q. You have had more than one text communication
 2 with Mr. Speas, correct?
 3 A. I think there were may- -- I think there were
 4 two, one in advance of -- of -- of two phone
 5 calls, two, you know, are you going to be
 6 available at such and such a time sort of
 7 thing.
 8 Q. After you communicated in response to
 9 Mr. Speas's first text where you said, yes,
 10 willing to talk to you, when was the next
 11 time you spoke with Mr. Speas?
 12 A. I think that that was about a week or so. It
 13 was -- you know, it was starting to get close
 14 to the holidays so, you know, there was time
 15 between communiques. If -- if, you know,
 16 research needed to be done or references
 17 or -- or questions asked, it -- everything
 18 was starting to take a lot longer because it
 19 was the holiday season.
 20 Q. The next time you spoke with Mr. Speas, was
 21 that a telephone communication?
 22 A. Yes.
 23 Q. Did you initiate the call?
 24 A. I don't know. I really don't remember. It
 25 was -- we -- the idea being follow-up

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1 questions need to be asked on our end and --
 2 and it -- the -- the discussion continued as
 3 to whether or not there was -- I don't know.
 4 I think I -- I don't know how to -- to
 5 explain it any differently than I've already
 6 explained it, frankly.
 7 Q. On the first telephone call that you had with
 8 Mr. Speas, was there anyone else on the call
 9 as far as you know?
 10 A. No.
 11 Q. So just you and Mr. Speas on the first
 12 telephone call?
 13 A. That's how I remember it.
 14 Q. And that's all I can ask you for is the best
 15 of your recollection --
 16 A. Yeah.
 17 Q. -- today. Approximately how long did the
 18 first telephone call between you and
 19 Mr. Speas last?
 20 A. Maybe ten minutes, again, just -- there was
 21 not a lot of detail --
 22 Q. Tell me --
 23 A. -- discussed. It was really more just a
 24 friendly business-style conversation.
 25 Q. Tell me as -- to the best of your

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1 recollection what you said and what Mr. Speas
 2 said on that first telephone call.
 3 A. I said that I had -- I said that I had
 4 material that might be relevant to the case.
 5 Q. Did you explain in any further detail what
 6 material you had?
 7 A. Vague detail, external storage devices
 8 that -- I don't know whether or not I
 9 mentioned -- I -- I don't think I
 10 specifically said backups. I just said
 11 external storage devices.
 12 Q. What do you recall Mr. Speas saying in
 13 response to that?
 14 A. I believe that he did even in that first
 15 phone call want to clarify that these were --
 16 that -- that these had been given to me.
 17 Q. What specifically did Mr. Speas ask you about
 18 the hard drives?
 19 A. The -- I think if they'd been given to me.
 20 Q. And so your recollection is Mr. Speas said,
 21 have these been given to you?
 22 A. I don't know what his exact words were. The
 23 gist of it was, are they yours, and I said
 24 that they had, indeed, been given to me.
 25 Q. Did you tell him the circumstances under

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1 which you had obtained them?
 2 A. More or less, that along with things that
 3 literally belonged to me and things that I
 4 took to mean from my father that he wanted me
 5 to have, I had -- I had asked for these, you
 6 know, and as I said, I asked my mother if I
 7 could take my jewelry box, too, even though,
 8 of course, the answer would have been yes and
 9 many -- many would say that if it was
 10 something that I left with my father of mine
 11 specifically with the intent that he would
 12 hold it for me, that when I came to his
 13 apartment after his death, that anything that
 14 had belonged to me up till the point of his
 15 death was already mine, but I still went to
 16 the extra effort to make sure because, you
 17 know, I -- I didn't want to -- I didn't want
 18 to give anyone the impression that I was
 19 there to -- to pick over the corpse.
 20 Q. Just to clarify, your -- your father never
 21 told you he wanted you to have his external
 22 hard drives or these thumb drives, correct?
 23 A. He said that he wanted -- that he would keep
 24 the data that I had stored on his computer.
 25 With that I took to mean -- we didn't really

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1 get a chance to discuss the details of all of
 2 his personal effects because when I last
 3 spoke to him he wasn't dying.
 4 Q. The information you turned over to Arnold &
 5 Porter in response to the subpoena was not
 6 limited to the -- your personal data that you
 7 discussed with your father that he would
 8 preserve for you, correct?
 9 A. Correct.
 10 Q. You did not have any conversations with your
 11 father in which he told you he wanted you to
 12 have possession of his hard drives or thumb
 13 drives which you've turned over to Arnold &
 14 Porter, correct?
 15 MR. JONES: Objection, asked and
 16 answered.
 17 A. No.
 18 Q. In your initial conversation with Mr. Speas
 19 did you share with him your understanding
 20 that the external hard drives and thumb
 21 drives that you had contained your --
 22 contained information regarding your father's
 23 redistricting work including his expert
 24 consulting work?
 25 A. Could -- could you ask the question again?

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1 I'm sorry.
 2 Q. Did you share with Mr. Speas any detailed
 3 information about what you believed these
 4 hard drives and thumb drives -- what the
 5 materials were on those hard drives and thumb
 6 drives?
 7 A. I did not get very specific, no. That is how
 8 I'm accustomed to doing things with attorneys
 9 is that attorneys decide what's relevant and
 10 what isn't and that if there's a chance that
 11 it might be relevant to a matter that that
 12 attorney is working on, that I would say,
 13 this might be relevant to the matter that
 14 you're working on. So that was pretty much
 15 what I said. I don't recall talking about
 16 specific files. I don't think that there
 17 was -- already we -- there was a feeling that
 18 it would be most proper to say, this might be
 19 relevant, and then to not speculate further.
 20 Q. Did anyone from Arnold & Porter specifically
 21 tell you that would be the better way to
 22 proceed, to give --
 23 A. I did not have any discussion with anyone
 24 from Arnold Porter.
 25 Q. Okay. Did anyone from -- I apologize --

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1 Poyner Spruill tell you that the best way to
 2 proceed would be to give them the entirety of
 3 the contents?
 4 A. Well, I didn't necessarily know who was and
 5 wasn't with Pointer Spruill [sic]. I only
 6 knew that these were attorneys that were
 7 working on the matter.
 8 Q. Did Mr. Speas or Ms. Mackie ever tell you
 9 that it would be best for you to turn over
 10 the entirety --
 11 A. They didn't say that it would be best. I'm
 12 sorry. They said that it would be a -- a --
 13 a better preservation of the integrity, that
 14 the chain of custody would be transparent and
 15 in that transparency, the integrity of the --
 16 of the potential evidence would be preserved.
 17 Q. Who told you that, Mr. Speas, Mr. Mackie, or
 18 both?
 19 MR. FARR: It's Ms. Mackie.
 20 A. Ms. Mackie.
 21 Q. Ms. Mackie. Sorry.
 22 A. I -- I don't recall which one of them said
 23 that. I'm sorry. I really don't.
 24 Q. This was a discussion you had with Mr. Speas
 25 or Ms. Mackie prior to your receiving the

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1 subpoena, correct?
 2 A. I -- I don't know. Now that you ask, I don't
 3 know which -- because at some point,
 4 honestly, I, once again, had assumed that
 5 this had all been seen before and I was
 6 really honestly talking about the fact that
 7 there was personal information of mine and
 8 explaining that, once again, it's that
 9 classic, okay, you know, just because you
 10 don't have anything to hide doesn't mean that
 11 you aren't entitled to privacy. So I
 12 actually did have a -- you know, with my dad
 13 echoing in my ear that you ask about that. I
 14 was getting ready to potentially turn over
 15 data that was personal to me as well so I
 16 really wanted to find out what the intentions
 17 were. And it was explained to me that --
 18 that this was quite clear -- it was quite
 19 clear that -- that anyone, either the -- the
 20 legislative defendants or the plaintiffs,
 21 were only properly entitled to even look at
 22 the content of files that were explicitly and
 23 obviously related to this case.
 24 Q. And that was something that either Mr. Speas
 25 or Ms. Mackie told you, that the only

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1 information anyone would be entitled to look
 2 at is information related to the
 3 redistricting and that no one would be
 4 entitled to look at any of your personal --
 5 A. Well --
 6 Q. -- information?
 7 A. -- no -- I'm sorry. No one in this -- in
 8 this -- in this matter, yes.
 9 Q. Is it your understanding that your personal
 10 information to the extent it existed on the
 11 hard drives and the thumb drives has been
 12 maintained by Poyner Spruill and has not been
 13 produced in this litigation?
 14 A. You know, I haven't really been keeping up to
 15 date on -- I know that it's a matter of
 16 contention. I know that I was a little
 17 bit -- kind of raised my eyebrows when I
 18 found out that the legislative defendants
 19 felt that they needed to see everything,
 20 but -- I knew that that was probably going to
 21 be the end result because I know how
 22 litigation goes and I myself have been the
 23 subject of, you know, quite a few
 24 speculations about whether or not a person is
 25 entitled to privacy or confidentiality.

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1 Usually the answer ends up somehow being no
 2 so with that expectation, I still yet spoke
 3 my intention and that was that my personal
 4 data be protected, that my mother's personal
 5 data be protected, and that my father's
 6 personal data be protected, and that the only
 7 things that were on these drives that would
 8 be -- would be looked at on paper was files
 9 that were explicitly and clearly related to
 10 this matter. So when the legislative
 11 defendants moved to see it all, I -- I went,
 12 huh, well, what do you know. Wonder why they
 13 want that. That was about the extent of it,
 14 but it seemed pretty -- pretty predictable.
 15 My father used to often exasperate about,
 16 well, they -- they're not entitled to that,
 17 it's personal, so...
 18 Q. Did you have any conversations with Mr. Speas
 19 or with Ms. Mackie about the incompetency
 20 proceedings that you were dealing with with
 21 your mother?
 22 A. No. No. I mean, maybe I might have
 23 mentioned that that's how we got into
 24 conversation, because I was getting a
 25 referral, but, no, I did not discuss the

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1 incompetency matter with Eddie Speas or
 2 Caroline Mackie beyond the fact that it
 3 existed.
 4 Q. You do recall the -- having the discussion of
 5 the existence of the fact with them in the
 6 context --
 7 A. You know --
 8 Q. -- of the referral?
 9 A. -- I -- I'm sorry. I didn't mean to cut you
 10 off. I honestly don't know if -- if we
 11 discussed it even to that point. The only
 12 way in which there would have even been any
 13 awareness -- I don't even know if I got as
 14 specific as to say that it was incompetency.
 15 I think, honestly, I probably used some sort
 16 of colloquialism, à la Hofellerism, like,
 17 yeah, I got to beat the vultures off the
 18 widow. So really I think I put it more in
 19 terms like that. It was never my intention
 20 to discuss the matter or the merits of the
 21 case or anything specific with these
 22 attorneys. It was unrelated.
 23 Q. And who are the -- the vultures you were
 24 referring to?
 25 A. Various friends and family.

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1 Q. Who specifically?
 2 A. Trudy Harris, my cousin; a half-uncle who may
 3 or may not have been -- you know, there --
 4 it's -- it's been very unclear how many
 5 friends and family were expressing some sense
 6 of entitlement to things like my
 7 grandmother's jewelry, you know, things like
 8 that.
 9 Q. Were either Ms. Harris or your uncle involved
 10 at all in the incompetency proceedings?
 11 A. Involved, no. And, again, it's still yet
 12 unclear exactly. There's been very little
 13 transparency. So names of interested
 14 parties. That doesn't mean they were
 15 involved. It just means that someone, i.e.,
 16 the petitioner, may have looked on documents
 17 including trusts and wills and such and seen
 18 names of beneficiaries and simply written
 19 them down. I was all very unclear who was
 20 and wasn't literally involved. I mean, this
 21 is an estate. There's usually a mess when
 22 there's an estate that has any -- any
 23 interest to anyone at all.
 24 Q. During your first telephone call with
 25 Mr. Speas sometime in December 2018 did

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1 Mr. Speas during that communication talk
 2 about possibility of sending you a subpoena?
 3 A. I don't remember in which conversation, but,
 4 actually, I believe that it was -- I believe
 5 that it was Jane Pinsky that actually said
 6 they're going to send -- I think she said,
 7 they -- they asked me to let you know so that
 8 you would have a heads-up that there was a
 9 subpoena out.
 10 Q. So you had -- that there was a subpoena out.
 11 I don't understand.
 12 A. That it had been mailed --
 13 Q. Okay.
 14 A. -- or whatever.
 15 Q. Prior to your receiving the subpoena, it's
 16 your recollection that Ms. Pinsky called you
 17 to let you know that there was a subpoena
 18 being sent out?
 19 A. I don't know that that was the specific
 20 reason that she called. We had sort of --
 21 you know, we were -- we had casual
 22 conversation at that point because we --
 23 she -- she, once again, was asking me how
 24 things were going and was there -- you know,
 25 how -- how was my mother feeling, was she --

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1 how was she doing, because I'd told her that
 2 she was extremely stressed out and -- and
 3 emotionally -- emotionally drained and
 4 very -- feeling very vulnerable and -- and
 5 all because, you know, she really isn't --
 6 she isn't prepared for litigation. She was
 7 not expecting to be in such a -- an exposed
 8 position and, you know, my father had managed
 9 to keep her very sheltered from his work up
 10 until the point when he was no longer around
 11 to do that.
 12 Q. In the first telephone call that you had with
 13 Mr. Speas you told him that you had some
 14 external storage devices. You weren't sure
 15 if they were backup or not, but you had these
 16 materials. You said he asked you for
 17 clarification if they were yours and you said
 18 yes, they were yours.
 19 What else was discussed during that
 20 conversation, if you recall?
 21 A. I think at that point really that -- there
 22 wasn't much other than that. It was -- as
 23 communication with attorneys often is, you
 24 know, there was a -- a basic set of questions
 25 and then it was let's -- let's consult, let's

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1 re- -- do our research and get back to you.
 2 MR. SPARKS: Are you okay? Do you need
 3 a break?
 4 THE WITNESS: (Nods head).
 5 MS. SCULLY: We can take a break.
 6 MR. SPARKS: She seems to be tired.
 7 Thank you.
 8 THE VIDEOGRAPHER: Going off the
 9 record. The time is 12:47 p.m.
 10 (Whereupon, there was a recess in the
 11 proceedings from 12:47 p.m. to 1:04 p.m.)
 12 THE VIDEOGRAPHER: Going back on the
 13 record. The time is 1:04 p.m.
 14 BY MS. SCULLY:
 15 Q. Ms. Hofeller, before we went off the record
 16 we were talking about the first telephone
 17 communication that you had with Mr. Speas and
 18 I believe you testified that in conclusion of
 19 that conversation, Mr. Speas said something
 20 along the lines of, okay, we'll have to do
 21 some research. We'll be back in
 22 communication with you; is that correct?
 23 A. As far as I know. I mean, it -- it -- I
 24 remember it being very much what I would
 25 expect communication with an attorney on a

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1 civil matter to be like as in, tell us about
 2 what you have and we will then -- they -- I
 3 got the impression that they really wanted to
 4 make sure that -- that I was -- that this was
 5 a voluntary -- you know, that I was okay with
 6 the idea that -- that -- that I might -- you
 7 know, that this would be potentially involved
 8 in the matter, not just, you know, an aside.
 9 And with that they wanted to make sure that
 10 it was relevant really, I guess, would be the
 11 best word, that it was relevant. And before
 12 they even wanted to go into any more of the
 13 nuts and bolts, they wanted to make sure that
 14 this was even a relevant matter because I
 15 think the impression being that they didn't
 16 want to discuss -- they didn't want to
 17 discuss a lot with me that wasn't
 18 specifically relevant to the case.
 19 Q. When was the next communication that you
 20 recall having with Mr. Speas after this
 21 original approximately ten-minute phone
 22 conversation that you had with him sometime
 23 in December 2018?
 24 A. Well, again, my impressions from that time,
 25 mostly about the fact that the holidays were

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1 upon us and so there was a lot of -- there
 2 was a lot of phone tag. There was a lot of
 3 someone's going to be out of town and then
 4 another person's going to be on vacation and
 5 things like that. So I think -- I mean, the
 6 next -- the next conversation, I believe,
 7 that I can really firmly say it happened
 8 instead of just leaving messages would have,
 9 I think, been after the holidays, sometime --
 10 I think sometime in January, I think.

11 Q. That next conversation when you actually
 12 spoke with Mr. Speas, not just exchanging
 13 voicemail messages, sometime in January, did
 14 you make that call or did Mr. Speas call you?

15 A. I don't recall.

16 Q. Regardless of who initiated the call, who was
 17 on the call?

18 A. I think that -- I think that it was just --
 19 you know, it -- it -- it had come to the
 20 point where it was clear to me at least
 21 that -- that Eddie and Caroline were the
 22 attorneys that -- that were -- at Common
 23 Cause that were working on this matter. So,
 24 honestly, which -- which step was -- which --
 25 which bit of information was given to me by

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1 which one of them, Eddie or Caroline, it's
 2 kind of hard for me to recall off the top of
 3 my head, honestly. I'm not trying to be
 4 evasive. I just don't know who -- who said
 5 what. I was -- I was already thinking of
 6 them as interchangeable, you know, so --

7 Q. I understand.

8 A. -- it didn't seem relevant to me so I
 9 didn't -- I didn't make the point to remember
 10 who said what.

11 Q. Did you have any telephone conversations in
 12 which both Mr. Speas and Ms. Mackie were both
 13 on the line at the same time?

14 A. Yes. Yes, we did have at least one, and I
 15 think that was -- yeah, I think that would
 16 have been in January.

17 Q. What do you recall about that conversation
 18 with both Mr. Speas and Ms. Mackie on the
 19 phone in January?

20 A. I remember that the -- I believe -- I could
 21 say that the point of the conversation was
 22 to -- to get a -- an accurate survey of what
 23 information, what format, anything else that
 24 might be includable -- I know that's not a
 25 word but, you know, might be best included

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1 with the -- the media we'd already
 2 established was relevant to the -- to the
 3 case. Like is there any -- is -- is there
 4 anything else that you have that appears to
 5 be related to this directly that you would
 6 like to -- to mention? And I think -- I
 7 think that there was only -- there were
 8 things that were related to my father's work
 9 in that everything was related to his work,
 10 like, you know, certain -- certain statements
 11 where the -- the business is mentioned like
 12 as a -- like taxes, things like that, but
 13 nothing -- you know, nothing specific. I
 14 don't -- I don't recall.

15 Q. Do you recall having conversations with
 16 Mr. Speas and Ms. Mackie about the fact that
 17 information about your father's taxes were
 18 included in these materials that you were
 19 discussing producing to them?

20 A. We did not discuss specifically taxes. I
 21 had -- we were -- it -- it was established
 22 already that this media contained really a --
 23 a masala of -- of -- of data that was my
 24 personal data, my father's personal data, my
 25 father's work data, and, frankly, even my

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1 work data. There was stuff relevant to my
 2 work as well as my personal life on all of
 3 them and that it was very -- it was -- I
 4 think when I said personal that that pretty
 5 much covered everything nonre- --
 6 specifically North Carolina redistricting
 7 related. What I'm saying is I don't remember
 8 saying specifically, his tax returns are on
 9 this. I'm pretty sure I never said that.
 10 I -- we just -- when -- when we discussed the
 11 fact that it was all mingled, personal and
 12 work, that I -- I think that was implied that
 13 was covered.

14 Q. If I understand your testimony, you discussed
 15 with Mr. Speas and Ms. Mackie that within the
 16 materials you were providing to them was both
 17 data related to your father's work as well as
 18 personal data with regards to your father and
 19 personal data for your mother and personal
 20 data for yourself, correct?

21 A. Correct.

22 Q. Do you recall what, if anything, Mr. Speas or
 23 Ms. Mackie said in response to you sharing
 24 with them that this data was commingled and
 25 contained --

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1 A. They addressed it without -- I don't think I
 2 even had to really specify what, I think,
 3 seemed obvious and that is that obvious -- I
 4 wouldn't expect to see a lot of personal data
 5 suddenly appearing in this matter because
 6 their understanding of the directive to them
 7 was that only files that were explicitly,
 8 obviously North Carolina redistricting during
 9 this period of time related would even be
 10 looked at, much less entered into evidence.
 11 That was their understanding at that time.
 12 Q. And when you say that was their
 13 understanding --
 14 A. That's what they told me their understanding
 15 was.
 16 Q. Did you have any conversations with
 17 Ms. Mackie without Mr. Speas on the line?
 18 A. Yes.
 19 Q. How many conversations have you had with
 20 Ms. Mackie?
 21 A. I don't know. Three, maybe four. It was
 22 very -- again, many of these conversations
 23 weren't much more than just touch base,
 24 here's what we're doing, we're doing the
 25 research on this, we will get back to you,

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1 just, you know, polite -- if it had been a
 2 while or if I called and left a message,
 3 like, you know, have you found out whether or
 4 not X, X, X, then it was -- a lot of this was
 5 voice mail. I don't honestly -- I can't tell
 6 you exactly how many conversations and many
 7 of them were very brief, like just an attempt
 8 to schedule a phone call or something.
 9 Q. Did you have any e-mail communications with
 10 Ms. Mackie?
 11 A. I did and I -- the -- the -- what pops into
 12 my mind instantly is she e-mailed me the
 13 address to which I -- when it was established
 14 that I was not going to be able to get to
 15 Raleigh to actually produce the -- the
 16 evidence as per the subpoena -- because that
 17 was my original intention because I was back
 18 and forth, you know, helping my mother
 19 between my work in Kentucky and -- and -- and
 20 visiting and helping her with -- with her
 21 matters. But it -- it -- it became
 22 increasingly clear, one, that I wasn't going
 23 to make it to Raleigh soon enough to -- to --
 24 to -- to -- to get this produced and, two, I
 25 think they -- that they had already said that

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1 it was going to a third party anyway and that
 2 it would be basically not even handled by
 3 them. It would go directly to a third party
 4 anyway, so it would probably be just as well
 5 that I mail it directly to that third party
 6 for the -- the forensic IT expert really is
 7 what my understanding was. I don't remember
 8 the exact words they used, but the idea that
 9 this would be someone that could say, this is
 10 how it was when we received it and could
 11 confirm things like that none of the files
 12 had been altered.
 13 Q. I thought you testified earlier that you did
 14 not mail the materials directly to a
 15 third-party vendor; is that correct?
 16 A. I mailed them to -- I mean, I thought that
 17 Poyner Spruill -- no, not Poyner Spruill. I
 18 mean --
 19 Q. Is it your understanding that you thought --
 20 A. Yes.
 21 Q. -- Arnold & Porter was a third-party vendor
 22 when you sent them the material?
 23 A. Vendor? No. Just another -- a different
 24 attorney. I said an attorney in D.C. who is
 25 a forensic expert on IT essentially.

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1 Q. Okay.
 2 A. I don't remember the exact words, but that
 3 was the understanding that I took away from
 4 it, that they felt that it would be a -- a --
 5 a better -- I don't know how to put it. I
 6 don't -- I don't have, as my father would
 7 call it, the legalese to -- to repeat exactly
 8 what was said. I did not ever get the
 9 impression this was a vendor. My
 10 understanding this was still a lawyer but
 11 that this was somebody who specialized in
 12 this sort of thing.
 13 Q. Okay. Approximately how many e-mail
 14 communications did you have with Ms. Mackie?
 15 A. Not very many. I remember that she gave me
 16 the address and then she had said that if I
 17 was having trouble -- at a certain point
 18 because I was having trouble finding a -- a
 19 FedEx office close to my house, and also, for
 20 a brief period of time, you know, the --
 21 it -- it was about a hundred dollars to ship
 22 and we had a brief discussion about how I
 23 would be reimbursed and I said, well, I'll
 24 have to wait till Friday because, you know,
 25 my paycheck was clearing and I didn't want to

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1 spend that money in advance. So, you know,
 2 stuff like that. It was very much just how
 3 was I going to actually achieve getting it in
 4 a box and getting it to that party. So I
 5 don't know exactly how many exchanges we had
 6 over that.

7 Q. I know we talked about your text messages
 8 with Mr. Speas. Did you have any e-mail
 9 communications with Mr. Speas?

10 A. I don't know that I had a specific e-mail
 11 communication with Mr. Speas. I -- I think
 12 he was maybe CC'd on a couple of the things
 13 or if not all the things that -- anything --
 14 like I said, I was -- I was very quickly
 15 aware of the fact that Caroline and Eddie
 16 were the attorneys, so, again, I'm accustomed
 17 to working with teams of lawyers where
 18 everybody is CC'd on everything relevant. So
 19 I don't know how many of them were. I just
 20 remember seeing who was on the CC list and --
 21 like, for example, when I saw the motion, I
 22 noticed Mark Braden. I was like, oh, hey,
 23 hi, Mark.

24 Q. In your -- you've testified in the
 25 conversations that you've had with Ms. Mackie

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1 and as well as with Mr. Speas that they've
 2 mentioned doing research. Did they say
 3 specifically what type of research they were
 4 doing?

5 A. As to the relevance and admissibility of
 6 this -- potential relevance and admissibility
 7 of this evidence. Also, they -- they were --
 8 you know, they were very polite and -- and
 9 really wanted to make sure that I didn't feel
 10 that they were pulling this out of me or that
 11 I was on the spot. They were sensitive about
 12 the fact that my father had very recently
 13 passed and they were just, I mean, like
 14 attorneys are, you know, careful, you know,
 15 just polite. They didn't -- they didn't want
 16 to make me feel like I was under any pressure
 17 or -- I don't know how to put it best. I
 18 think -- is my -- am I getting my point
 19 across? I don't know.

20 Q. When you -- at what point in time did you
 21 make the decision that you were going to turn
 22 over to Arnold & Porter these hard drives and
 23 thumb drives? I know you said you originally
 24 had a plan that you were going to hand
 25 deliver them in Raleigh and couldn't do that.

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1 A. At what point did I make the decision to --
 2 did we make the decision to mail them --

3 Q. No.

4 A. -- or --

5 Q. Earlier in the process. At what point did
 6 you say, yeah, I'm going to give you -- I'm
 7 comfortable giving you all of this stuff, you
 8 can have it?

9 A. Well, honestly, I wouldn't have brought it up
 10 if I wasn't comfortable with the idea that I
 11 would eventually give it to somebody.

12 Q. So is it fair to say when you had your
 13 initial communication with Mr. Speas, at that
 14 point in time you already intended and
 15 planned to provide them if they wanted it the
 16 hard drives and the thumb drives?

17 A. Yes.

18 Q. Have you had conversations with anyone else
 19 at Poyner Spruill besides Edwin Speas and
 20 Ms. Mackie?

21 A. No.

22 Q. Is there anything you discussed with
 23 Ms. Speas [sic] or Ms. Mackie in your
 24 communications with them that we haven't
 25 already covered?

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1 A. I really don't think so, no. Maybe -- maybe
 2 somebody said something about the weather but
 3 nothing -- certainly nothing relevant.

4 Q. Other than exchanging of general pleasantries
 5 on the communications that you've had with
 6 Ms. Speas and Ms. Mackie, have we discussed
 7 the substance of the communications that
 8 you've had with them?

9 A. Yes.

10 Q. Have you had any communications with Stanton
 11 Jones with Arnold & Porter before today?

12 A. Phone call.

13 THE WITNESS: Were you -- yes, that
 14 was --

15 A. I'm sorry. I don't remember all of the
 16 names.

17 THE WITNESS: When you called and --
 18 and said, I have a room full of attorneys --
 19 it's, you know, a colloquialism -- that
 20 was -- what day was that?

21 A. Last week before the weekend. The Thursday,
 22 I think it was, there was a conference call
 23 where we -- where it was -- it was dropped
 24 that there would very likely be a deposition
 25 to authenticate.

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1 Q. Last Thursday you had a conference call with
 2 Mr. Jones. Was Mr. Sparks on the --
 3 A. Yes.
 4 Q. -- call as well? Who else was on the call,
 5 if anyone?
 6 A. I -- Caroline definitely and --
 7 THE WITNESS: Eddie, were you part of
 8 that, too?
 9 A. No. Okay.
 10 Q. It's only if you recall.
 11 A. I don't. I -- I -- I remember asking for the
 12 list, but I was in the car and --
 13 MR. JONES: I'll -- I'll just say we're
 14 looking blankly at you because --
 15 MS. SCULLY: Yes.
 16 MR. JONES: -- you have to answer based
 17 on your recollection.
 18 THE WITNESS: I know.
 19 MR. JONES: You're not allowed --
 20 THE WITNESS: I know. It's --
 21 MR. JONES: -- to ask us questions.
 22 THE WITNESS: It's -- it's -- I --
 23 MR. JONES: So I don't --
 24 THE WITNESS: I --
 25 MR. JONES: And we're not trying to be

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1 rude.
 2 BY MS. SCULLY:
 3 Q. It's an un- --
 4 A. Sometimes I forget that it's not --
 5 Q. And it's an unnatural --
 6 A. -- a casual conversation.
 7 MR. JONES: Yes.
 8 BY MS. SCULLY:
 9 Q. Right.
 10 A. This is -- I honestly don't recall the names
 11 of -- of everyone that was involved. I do
 12 remember because I said, hi, Caroline --
 13 because I had spoken to her before. And I
 14 think that the other names were names that I
 15 did not offhand know so...
 16 Q. So to the best of your recollection, on the
 17 call was Stanton Jones, Caroline Mackie, and
 18 Mr. Sparks. There may have been a few
 19 additional individuals whose names you can't
 20 recall and you didn't recognize at the time?
 21 A. Yes.
 22 Q. You were in a car when you received the call
 23 you said, yes?
 24 A. Yes.
 25 Q. Approximately how long did the telephone call

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1 last?
 2 A. It -- it -- it's hard to say because my -- my
 3 Bluetooth connection with my car kept
 4 dropping calls so there were -- there were a
 5 number of -- of drops. There was -- at one
 6 point I even continued -- I must have gone on
 7 for at least a minute or two before I
 8 realized that there was no one on the other
 9 end. Basically, it was just about how I
 10 came -- the same set of questions that you
 11 asked today, basically, how did I come by it,
 12 making -- you know, was I -- was it given to
 13 me? Yes. All of that. That -- and I -- you
 14 know, I spoke a lot about -- actually, in
 15 that phone call I ex- -- I spoke a lot about
 16 the importance of -- of my father's work and
 17 how it was a very -- it seemed to me a very
 18 pertinent matter. And I explained at that
 19 time that I had throughout my young life
 20 been as an only child very involved in --
 21 involved in that when my father had a
 22 PowerPoint presentation that he had just
 23 designed for the state legislators, he would
 24 say (indicates). He -- I -- at age 11 I
 25 think he felt that I was about at that level.

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1 If you can understand this, then I've done --
 2 I've done my job. And -- and any -- any
 3 attempts that he made to -- to -- to make the
 4 matter understandable to someone who wasn't
 5 in, you know, cartography and demographics,
 6 he would often test that on me to see because
 7 I knew more probably than your average
 8 11-year-old but still wasn't, you know, like
 9 one of the programmers. So he thought that
 10 if -- if it was clear to me, that that would
 11 be a good measure of if he, you know,
 12 summarized it accurately. So, you know, I
 13 did a little bit of -- of -- of, I don't
 14 know, sort of anecdotal tales about what it
 15 was like growing up in -- in a -- inside the
 16 beltway as it were.
 17 Q. Would you say the call lasted more than an
 18 hour?
 19 A. I don't think it was more than an hour, no.
 20 It was about -- as -- as far as the amount of
 21 time that I actually spent on the phone,
 22 closer to 45 minutes. I mean, I -- as best I
 23 can recall. I honestly was kind of trying to
 24 find a place to park where people weren't all
 25 close by. I had -- you know, wasn't really

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1 familiar with the area. I just wanted to get
 2 somewhere so I wasn't going to be talking and
 3 driving at the same time.
 4 Q. Did you have any in-person meeting with
 5 Mr. Jones or Mr. Speas in advance of today's
 6 deposition?
 7 A. Nope. This is the first time I've seen
 8 either of them.
 9 Q. Prior to today's deposition had you ever seen
 10 the photographs that were marked as Exhibit
 11 2?
 12 A. No.
 13 Q. Have you had any other communications with
 14 Mr. Jones besides this telephone conversation
 15 we were talking about that occurred last
 16 Thursday?
 17 A. No. No. Messages about everything have been
 18 coming to me through my attorney.
 19 Q. In your communications with Mr. Speas and
 20 Ms. Mackie, at what point in time did either
 21 Ms. Speas or Ms. Mackie address the actual
 22 issuance of a subpoena?
 23 A. I don't think -- I honestly don't think
 24 that -- I'm not sure that I even spoke to
 25 them directly in advance of -- well, I think

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1 that -- that -- that it was Jane who
 2 mentioned that they wanted to give me the
 3 heads-up that there would be -- that that
 4 would be out and -- because I had mentioned
 5 that the Geographic Strategies computers had
 6 been taken already by my father's business
 7 partner, I think they mentioned to me that
 8 there was a subpoena issued to Dale, to
 9 Dalton Oldham, but then at that point it
 10 was -- I asked questions like, will I
 11 theoretically get this back?
 12 Q. Uh-huh.
 13 A. And they said yes. And I was just trying to
 14 get an idea of -- of what their journey was
 15 going to be, you know, considering that it
 16 was my property. And it was mostly at that
 17 point discussion about just, you know,
 18 literally where they should be sent and --
 19 and all of that.
 20 Q. Who mentioned to you that a subpoena was
 21 issued to Dale Oldham?
 22 A. I don't remember whether that was Eddie or
 23 Caroline.
 24 Q. Were you surprised that a subpoena was issued
 25 to Dale Oldham?

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1 A. No. No.
 2 Q. In what context did they bring up that a
 3 subpoena was issued to Dale Oldham?
 4 A. I think it was when I, again, had said
 5 something about -- I don't know. I felt like
 6 I didn't want to promise that any of this
 7 was -- was relevant or new because -- and I
 8 kept -- I really did genuinely believe that
 9 because of the fact that Dale had had this
 10 repeated conversation, this repeated
 11 interaction with my father and his -- you
 12 know, his possessions that everything that
 13 could possibly be at all pertinent had
 14 already been collected.
 15 Q. Did either Mr. Speas or Ms. Mackie tell you
 16 that Dale Oldham had produced materials in
 17 response to a subpoena?
 18 A. No. I -- I did ask.
 19 Q. And what did they say?
 20 A. And I think it was Caroline that said, he's
 21 refusing this -- to accept service. And I
 22 said, that's the Dale I know.
 23 Q. So it didn't surprise you that Mr. Oldham was
 24 not responding to the subpoena?
 25 A. That's correct. It's --

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1 MR. SPARKS: Objection --
 2 THE WITNESS: Oh, yeah.
 3 MR. SPARKS: -- mischaracterization.
 4 THE WITNESS: Yeah.
 5 MR. SPARKS: Go ahead.
 6 A. I -- I would say nothing -- nothing surprises
 7 me with attorneys. I -- again, you know, my
 8 father did not -- no offense to any -- any
 9 esquire here, but he did not have a very
 10 reverential attitude towards the whole
 11 process. He said something about that --
 12 along with like a -- a little quip like with
 13 legislation -- you know, legislation is like
 14 sausage, you -- you shouldn't watch it being
 15 made. You know, I think he felt the same
 16 about litigation so -- he --
 17 Q. You un- --
 18 A. -- often used to say that Dale was a very --
 19 very -- a good strategist.
 20 Q. You understood at the time you were speaking
 21 with Mr. Speas and Ms. Mackie that they had
 22 been unable to obtain from Mr. Oldham records
 23 relating to your father's work --
 24 A. Only --
 25 Q. -- correct?

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1 A. -- because I --
 2 THE WITNESS: I'm sorry.
 3 MR. SPARKS: Objection,
 4 mischaracterization. And just to be specific
 5 and not to have a talking -- she said that
 6 her -- what she was told is he never accepted
 7 service so -- and I'm not trying to shape
 8 testimony. That's just what she said.
 9 A. Yes. I asked because I was curious because
 10 I -- again, the same reason I was curious
 11 when I saw all of these files and had a
 12 minute to look at them, really my -- my
 13 interest in them was a bit more on the
 14 academic end than anything else.
 15 Q. You understood based on your conversations
 16 with Mr. Speas and Ms. Mackie that they had
 17 not received any of your father's business
 18 records from Mr. Oldham in the litigation,
 19 correct?
 20 MR. JONES: Objection. It's been asked
 21 and answered.
 22 A. It was --
 23 MS. SCULLY: It hasn't been answered.
 24 A. -- my --
 25 Q. You may answer.

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1 A. -- understanding based on a response to my
 2 direct question that Dalton Oldham was
 3 refusing to accept service on the subpoena.
 4 Q. And as a result of his refusing to accept
 5 service, you understood he had not turned
 6 over any documents, correct?
 7 A. Yes.
 8 Q. Did you retain copies of any of the hard
 9 drives and thumb drives that you produced to
 10 Arnold & Porter in response to the subpoena?
 11 A. Yes.
 12 Q. Did you make copies of all of the hard drives
 13 and thumb drives?
 14 A. I was not actually able to copy everything
 15 because I did not at that moment have
 16 adequate storage.
 17 Q. What -- which files did you copy and
 18 maintain?
 19 A. I was really principally concerned with --
 20 well, first of all, I -- I did -- there was
 21 one hard drive I know that had many, many,
 22 many, many backups of the same hard drive, so
 23 I copied, you know, the first one and the
 24 last one only knowing that that was going to
 25 be redundant and I was not -- I was not, I

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1 didn't feel, charged with maintaining the
 2 forensic integrity so I was just -- I wanted
 3 to make sure that I had -- that I had
 4 everything in that it was mine, in that it
 5 was -- I don't have a lot of -- of memento
 6 from my father. I was kind of hoping that I
 7 would be able to preserve this for posterity
 8 if nothing else. And knowing how these
 9 things work, even though it was clear that
 10 the -- that the intention was that these
 11 things would be returned to me, that's
 12 another thing my father taught me. You don't
 13 count on it.
 14 Q. The copies that you made of the -- some of
 15 the materials that you provided to Arnold &
 16 Porter, where are those copies maintained?
 17 A. I have those at home in my home in Kentucky
 18 and I have it on a couple of my own thumb
 19 drives.
 20 Q. And where are the thumb drives kept?
 21 A. In the same drawer where I keep pens,
 22 pencils, stuff like that.
 23 Q. Is the drawer in your home in Kentucky? I'm
 24 trying to understand --
 25 A. Yes.

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1 Q. -- physically --
 2 A. Yes.
 3 Q. -- where it is.
 4 A. Yes. I'm sorry. I didn't mean to -- I -- I
 5 wasn't sure what you were asking. Yes,
 6 they're -- they're in Kentucky.
 7 Q. So all of the copies that you've made are
 8 maintained at someplace in your home in
 9 Kentucky, correct?
 10 A. All of the copies that I made, yes, and --
 11 Q. Correct?
 12 A. Except, of course -- now, I have some copies
 13 of the photographs of me and my children, for
 14 example, on -- on -- on like my laptop that
 15 is -- it's like -- I -- I don't put pictures
 16 as background for desktop, but sometimes I
 17 have little decorative things. I was, again,
 18 so happy to have these pictures again that I
 19 have some of those, but other than that, no,
 20 I -- I tried really to keep it separate. I'm
 21 not, you know -- have more pressing matters.
 22 Q. Have you provided anyone else with any copies
 23 of the materials that you turned over to
 24 Arnold & Porter?
 25 A. Yes. My files, things that were literally

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1 mine, I have shared with colleagues in my
 2 work as a research consultant in criminology,
 3 specifically victimology, specifically with
 4 an emphasis on gender-based violence. So
 5 things that were relevant to our study of --
 6 of anything involving that topic that were
 7 there on note files, those -- mine, yes.
 8 Q. Have you shared with anyone any copies of any
 9 materials that relate to your father or your
 10 father's work?
 11 A. No, other than communication between him and
 12 me on matters that were related to me, but
 13 not -- nothing related to his work.
 14 Q. There was, I understand also, on the files
 15 you provided to Arnold & Porter personal
 16 health information about your mother,
 17 correct?
 18 A. I -- I honestly don't know. I didn't really
 19 examine all of the files that appeared to be
 20 health related to see which of them were Mom
 21 and which of them were Dad, and honestly,
 22 right at this moment I -- I don't -- I don't
 23 know that I really observed -- okay. I think
 24 there was like a HIPAA form, but one of them
 25 was mine and I know there are medical records

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1 of mine on that hard drive, one of them.
 2 Several, I think. I have some HIPAA release
 3 forms that I scanned and sent to hospitals,
 4 doctors, to obtain medical records on myself
 5 and my children. My children's medical
 6 records are part of that archive, vaccination
 7 records, things like that.
 8 Q. Sitting here today, do you know if -- in the
 9 materials that you provided to Arnold &
 10 Porter if there was personal health
 11 information related to your mother in those
 12 materials?
 13 A. I don't know.
 14 Q. Could have been; you just don't know?
 15 A. Exactly.
 16 Q. Other than the information related to you
 17 personally that you provided to some of your
 18 coworkers, have you provided copies of
 19 information -- this information that you
 20 produced to Arnold & Porter to anybody else?
 21 A. I'm -- I'm sorry. Clarify the question
 22 again.
 23 Q. You've testified that you provided some of
 24 your personal information that is contained
 25 within the materials you provided to Arnold &

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1 Porter, correct?
 2 A. Yes.
 3 Q. I'd like to understand if -- putting that
 4 information aside --
 5 A. Uh-huh.
 6 Q. -- have you provided any other information
 7 from the materials you provided to Arnold &
 8 Porter to anyone else?
 9 A. No.
 10 Q. You mentioned that Mr. Speas and Ms. Mackie
 11 talked to you about a subpoena that they'd
 12 issued to Dale Oldham. Did either Mr. Speas
 13 or Ms. Mackie inform you that they had issued
 14 a subpoena to your mother as well as to the
 15 estate of your father?
 16 A. Yes.
 17 Q. When did they first tell you about that
 18 subpoena that they had issued?
 19 A. I think almost immediately after it was
 20 issued.
 21 Q. Did they tell you in advance of issuing it
 22 that they were going to issue it?
 23 A. I don't think so. I don't honestly remember.
 24 No. I think it was they had just issued it.
 25 Q. Did they tell you why they were sharing that

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1 information with you?
 2 A. Because they knew that I was in constant
 3 communication with my mother and they --
 4 again, this was all -- there was -- there's a
 5 lot of talk about being sensitive to the fact
 6 that my father had recently deceased and I
 7 think that the -- the impression was that
 8 they wanted me to know so that I -- so that
 9 my mother wouldn't, you know, see another
 10 legal document and think that it was, you
 11 know, something that she was going to be, you
 12 know, directly -- I don't know. That the
 13 incompetency got her very understandably --
 14 she felt very put upon, very examined, and --
 15 and I think the idea was -- I think I had
 16 told them that they -- that I would like them
 17 to tell me at that point so that I could know
 18 that my mother was not going to be scared
 19 when -- when she received it and think, you
 20 know, she's -- she has some memory -- memory
 21 issues as is normal for someone her age. So
 22 they knew that I was very sensitive to that
 23 and that she -- even if I had told her, which
 24 I didn't, that she might not remember that --
 25 that that's what that was. So that was

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1 really pretty much it, so that -- that I
 2 would -- that my mother wouldn't be caught
 3 off guard and -- and be frightened and that I
 4 would have a chance to -- to, once again,
 5 clarify with her what was going on and that
 6 that wasn't going to be a -- a problem for
 7 her.
 8 Q. And when you say it wasn't going to be a
 9 problem for her, what do you mean by that?
 10 A. As opposed to the proceedings that are
 11 directly -- that were directly challenging
 12 her competence, which was very much a problem
 13 for her.
 14 Q. Did you have conversations with either
 15 Mr. Speas or Ms. Mackie about the fact that
 16 your mom had these memory problems?
 17 A. No, not specifically the memory problems. I
 18 think it was more casual like, you know,
 19 she's -- she's -- her emotions are very raw
 20 right now. She's on edge from everything
 21 that's been happening. And I think really it
 22 was more, again, in casual conversation
 23 the -- neither Eddie nor Caroline was
 24 expressing any type of interrogatory interest
 25 in -- in the other matter. We really -- our

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1 conversation really was very much centered on
 2 this whole -- this, this matter, those
 3 materials, and my father in his -- in the
 4 context of his work as a political
 5 demographer.
 6 Q. Did you have any conversations with Mr. Speas
 7 or Ms. Mackie about whether your mom would --
 8 had possession of any materials that would be
 9 responsive to a subpoena?
 10 A. Yes, in that I -- basically, I -- I had said
 11 that I -- that between Dale having taken the
 12 work stuff and I taken the rest of what I
 13 saw, then that all -- all that remained in
 14 her home was -- was a personal PC that was
 15 really relatively new. I don't think that --
 16 that my parents even had that PC for more
 17 than a few weeks before my father died, and
 18 it did not -- it did not appear to me -- and
 19 the reason that I was familiar at all with
 20 the content of my mother's -- now my mother's
 21 personal computer is because she'd had some
 22 issue with a virus shortly before I had come,
 23 so I had -- along with the -- with the -- the
 24 gentleman that she had -- had come in to help
 25 her make sure that her -- her PC was secure,

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1 I just checked around to see if I saw
 2 anything untoward I -- looking for, you
 3 know --
 4 Q. So you shared -- if I understand your
 5 testimony correctly, you had shared with
 6 Mr. Speas and Ms. Mackie that between Dale
 7 Oldham having the two computers of your
 8 father and you having the hard drives and the
 9 thumb drives that your mother no longer had
 10 possession of any of your father's electronic
 11 work files, correct?
 12 A. I had said that if there was -- I remember
 13 that I was, again, like a -- like a lawyer,
 14 you know, I can't say for sure, but it looked
 15 to me that the only thing that could possibly
 16 even exist in her possession would be most
 17 certainly a duplicate of one or two files, a
 18 duplicate of something that was already in
 19 the matter, i.e., that -- that there might be
 20 one or two of the last things that he -- he
 21 mentioned to himself on that PC but that --
 22 that -- at first glance -- because also, I
 23 was looking for things relevant to me,
 24 photographs of the family, things that I
 25 might have missed, but it appeared as though

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1 there really wasn't anything much new at all
 2 on -- on -- on my mother's hard drive. So
 3 I -- I did not say for sure that I knew
 4 because I -- I didn't feel confident. I
 5 wasn't even in Raleigh at that time. I just
 6 said, as far as I know, there is nothing on
 7 her personal computer and I don't believe
 8 there's anything else much there. And I said
 9 that I would -- that I would probably be
 10 better able to confirm it when I was next in
 11 Raleigh.
 12 And in answer to your next question, no,
 13 I haven't really been -- my mother and I have
 14 not really been -- that hasn't been our
 15 focus. I only recently found out that there
 16 was even going to be a deposition or that --
 17 so I haven't actually gone through to --
 18 to -- to confirm it, but that's my
 19 understanding and that's her understanding,
 20 my mother's understanding, as far as I know,
 21 too.
 22 Q. I want to make sure I understand your
 23 testimony. So you --
 24 MR. SPEAS: Ms. Scully, your questions
 25 about my conversations with this witness have

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1 now exceeded the length of those
 2 conversations. I really think it's time you
 3 moved on to something else.
 4 BY MS. SCULLY:
 5 Q. In your communications with Mr. Speas, did
 6 you share with him that you would take it
 7 upon yourself to look to determine if your
 8 mom in her files had information related to
 9 your father's work?
 10 A. I really -- it was not -- I don't know -- I
 11 mean, I wasn't giving testimony. It was just
 12 a casual conversation where I said, as far as
 13 I know, there's really nothing there. I
 14 can't say for sure because I'm not there, but
 15 I'll ask my mother and I'll look just like to
 16 see if there's a new computer sitting on the
 17 table when I get there. I mean, really,
 18 there was very nonspecific tone, but I
 19 expressed what I'll go ahead and express
 20 again and that is that I really think that I
 21 had gotten the -- the survey of everything
 22 that could possibly be relevant and it was
 23 already in the hands of Poyner Spruill, I
 24 guess. No. Which one? I'm -- I'm getting
 25 all of you confused. Yes. Okay. Arnold

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1 Porter.
 2 Q. Did you at any point in time actually go
 3 through your mother's files to determine if
 4 she had any information that may be
 5 responsive to the subpoena that was served on
 6 her?
 7 MR. SPARKS: Objection. That has been
 8 asked and answered.
 9 A. Yes, it has. It --
 10 Q. Did you?
 11 A. -- really has. I -- I said that I went
 12 through her files before -- not her files --
 13 again, the personal PC principally to look
 14 for any other pictures -- honestly, pictures
 15 of family members was specifically what I was
 16 looking for. As I did that survey, I didn't
 17 notice anything else work related -- my
 18 father's work related. So did I go through
 19 it with the idea that I was looking for stuff
 20 for them? No. Did I go through it? Yes.
 21 Q. Did you have a conversation with your mother
 22 about the subpoena that was issued by Poyner
 23 Spruill on her?
 24 A. Yes. A conversation is a little bit an
 25 exaggeration. I basically said, you don't

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1 really have to be worried about this. This
 2 is -- this is -- this is about stuff that you
 3 gave me, but just -- she's used to the idea
 4 that lawyers like to cross their T's and dot
 5 their I's, and that's the way I put it to her
 6 and she understood it that way, and that was
 7 the end of the matter as far as she was
 8 concerned. I really didn't want to -- I
 9 mean, she -- she's bored with this. She
 10 spent 52 years being married to my father.
 11 MR. JONES: We've --
 12 BY MS. SCULLY:
 13 Q. It was your ex --
 14 MR. JONES: We've been going --
 15 BY MS. SCULLY:
 16 Q. It was your expectation that your mother
 17 didn't have any materials to produce and so
 18 you told her, you don't have to worry about
 19 it because you have no materials to produce
 20 in response to the subpoena, correct?
 21 MR. SPARKS: Objection,
 22 mischaracterization. Go ahead and answer the
 23 question.
 24 A. I'm really not trying to be evasive. I don't
 25 understand what part of your question I

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1 haven't answered yet. Maybe you could
 2 clarify what you would like to know so that I
 3 can answer --
 4 Q. Did you --
 5 A. -- your question.
 6 Q. -- tell your mother that there -- there were
 7 no materials that she needed to produce in
 8 response to the subpoena?
 9 A. You know what, no, I didn't put it that way
 10 because -- I just told her not to worry about
 11 it because my mother's really had enough of
 12 all of this and I didn't -- really, it was --
 13 it was pointless to -- to trouble her at that
 14 moment because we were actually discussing
 15 the funding of her trust, whether or not she
 16 was going to be able to access funds to come
 17 and visit me in Lexington. That was really
 18 the meat of our conversation and I -- as she
 19 was accustomed to sort of letting things go
 20 by with my father's work as married couples
 21 often don't pay a lot of attention to each
 22 other's work, it was in that tone. So I
 23 don't -- I'm really just trying to be
 24 accurate.
 25 Q. How about --

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1 A. I don't know how important it is...
 2 MR. SPARKS: Do you have any more?
 3 THE WITNESS: No.
 4 MR. SPARKS: Okay. We need to take a
 5 break. She's -- she's tired. Thank you.
 6 THE VIDEOGRAPHER: Going off the
 7 record. The time is 1:50 p.m.
 8 (Whereupon, there was a recess in the
 9 proceedings from 1:50 p.m. to 1:57 p.m.)
 10 THE VIDEOGRAPHER: Going back on the
 11 record. The time is 1:57 p.m.
 12 BY MS. SCULLY:
 13 Q. Ms. Hofeller, have you had any communications
 14 with a David Gersch?
 15 A. Not that I can recall, no.
 16 Q. Have you had any communications with someone
 17 named Elizabeth Theodore?
 18 A. No.
 19 Q. Any conversations or communications with
 20 Daniel Jacobson?
 21 A. No.
 22 Q. Any conversations that you can recall with
 23 anyone that works for Arnold & Porter besides
 24 Mr. Stanton Jones, the conversation we've
 25 already discussed?

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1 A. No.
 2 Q. Any conversations with anyone working for
 3 Poyner Spruill besides the conversations that
 4 you've had with Mr. Speas and Ms. Mackie?
 5 A. No.
 6 Q. Have you had any conversations or
 7 communications with Mark Elias?
 8 A. No.
 9 Q. Have you had any conversations or other
 10 communications with someone named Aria C.
 11 Branch?
 12 A. No.
 13 Q. Have you had any communications or other
 14 written communications with Abha Khanna?
 15 A. No.
 16 Q. Have you had any communications with anyone
 17 working for Perkins Coie?
 18 A. No.
 19 Q. Have you had any communications with anyone
 20 at Common Cause besides the communications
 21 with Ms. Pinsky and the communication with --
 22 MR. JONES: Mr. Phillips.
 23 BY MS. SCULLY:
 24 Q. -- Bob Phillips?
 25 A. No.

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1 Q. Are you a member of Common Cause?
 2 A. No.
 3 Q. Have you ever worked for Common Cause?
 4 A. No.
 5 Q. Have you ever told anyone that you were
 6 working for Common Cause?
 7 A. No.
 8 Q. Have you ever received any money from Common
 9 Cause?
 10 A. No. Oh, you know, actually, I think there
 11 was reimbursement for the FedEx --
 12 Q. And the reim- --
 13 A. -- in the form of a check.
 14 Q. The reimbursement for the FedEx -- and you're
 15 referring to the FedEx for shipping the
 16 documents to Arnold & Porter, correct?
 17 A. Yes. I provided them with a receipt and they
 18 provided me with a reimbursement for that
 19 amount.
 20 Q. Other than the reimbursement for the shipment
 21 for the box that you sent via FedEx to
 22 Arnold & Porter, have you received any other
 23 monies from Common Cause?
 24 A. No compensations, no considerations, no
 25 money.

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1 Q. Have you at any point in time received any
 2 monies from anyone at Poyner Spruill?
 3 A. No.
 4 Q. Have you received any monies at any point in
 5 time from anyone at Arnold & Porter?
 6 A. No.
 7 Q. Have you received monies at any time from
 8 anyone working for Perkins Coie?
 9 A. No.
 10 Q. You've talked about the review of the
 11 materials that you have conducted of the hard
 12 drives and the thumb drives. At any point in
 13 time did anyone else have access to and
 14 review those materials before you produced
 15 them to Arnold & Porter?
 16 A. No.
 17 Q. Did -- you testified that the materials that
 18 you took possession of from the residence
 19 where your father and mother resided -- you
 20 took those materials -- those electronic
 21 materials to your home in Kentucky --
 22 A. That's correct.
 23 Q. -- before --
 24 A. I'm sorry. I --
 25 Q. -- before you produced them to Arnold &

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1 Porter approximately March 13th, 2019,
 2 correct?
 3 A. Correct.
 4 Q. Has anyone else resided in your home in
 5 Kentucky during that period of time between
 6 October 2018 and March 13th, 2019?
 7 A. No. I live alone. Ditched the husband.
 8 First time in my life, actually, I have my
 9 own place. It's wonderful. I love it.
 10 Q. Prior to sending the hard drives and thumb
 11 drives to Arnold & Porter, did you provide
 12 copies of any of those materials to anyone
 13 else?
 14 MR. JONES: Ob- -- objection. That's
 15 been --
 16 A. I already answered that.
 17 MR. JONES: -- asked and answered.
 18 BY MS. SCULLY:
 19 Q. Was --
 20 A. I already answered that.
 21 Q. I just wanted to clarify if it was prior to
 22 your -- I know you -- you've testified
 23 already that you provided some personal
 24 information to a coworker. Was that prior to
 25 your sending the information to Arnold &

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1 Porter or after?
 2 A. That was prior and after because there was
 3 something else relevant. So, again, my
 4 material, exclusively mine, as in may -- I
 5 sent a copy of one of those pictures to
 6 another one of my colleagues, picture of my
 7 son.
 8 Q. I just wanted to clarify --
 9 A. Yeah.
 10 Q. -- so there wasn't a confusion about whether
 11 the copies were distributed prior to or after
 12 the -- the release of the information to
 13 Arnold & Porter.
 14 A. Yeah. I mean, I don't know. I mean, you
 15 know...
 16 Q. You testified earlier that before you made
 17 the production of the materials to Arnold &
 18 Porter that you did have some conversations
 19 with your mother about the fact that you were
 20 going to produce those materials to Arnold &
 21 Porter, correct?
 22 A. Yes.
 23 Q. Was anyone else present when you had those
 24 communications with your mother?
 25 A. No. I don't think so. I mean, these were

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1 done over the phone. I didn't get the
 2 impression that there was anyone else there
 3 so as far as I know there wasn't, no.
 4 MS. SCULLY: Can I have these marked 3
 5 and 4? 3 is on top, 4 is on bottom.
 6 (HOFELLER EXHIBIT 3 was marked for
 7 identification.)
 8 (HOFELLER EXHIBIT 4 was marked for
 9 identification.)
 10 MR. BRANCH: Thank you.
 11 MS. SCULLY: We're short one.
 12 MR. BRANCH: If you need to --
 13 MS. SCULLY: She has it. It's marked.
 14 MR. JONES: Why don't we give Tom your
 15 copy because --
 16 MR. SPEAS: Yeah.
 17 MR. JONES: -- he doesn't have one and
 18 we can share. So, Tom -- Tom --
 19 A. Okay. I see.
 20 MR. JONES: -- take a --
 21 BY MS. SCULLY:
 22 Q. Oh.
 23 MR. JONES: -- take a copy for each.
 24 MR. SPARKS: Thank you.
 25 A. I see that these are two different --

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1 MR. JONES: We'll share.
 2 MS. SCULLY: Thank you. I thought I'd
 3 made enough copies but apparently not.
 4 MR. SPARKS: It's good. We're good.
 5 Thanks.
 6 BY MS. SCULLY:
 7 Q. Ms. Hofeller, what's just been put in front
 8 of you marked as Exhibit 3 and 4, focusing
 9 first on Exhibit 3, do you recognize Exhibit
 10 3 as a copy of the subpoena that was issued
 11 to your mother, Kathleen Hofeller, on or
 12 about January 15th, 2019?
 13 A. I see that it is, but I don't recognize it.
 14 Q. Had you ever seen -- I know you testified
 15 earlier that you were aware that a subpoena
 16 was issued to your mother in this case. Had
 17 you ever seen a copy of the subpoena before
 18 today?
 19 A. Actually, no.
 20 Q. Exhibit 4 appears to be a copy -- I'll
 21 represent to you is a copy of a subpoena that
 22 was issued to the Estate of Thomas Hofeller.
 23 I know you testified earlier that you were
 24 aware that a subpoena was issued to your
 25 father's estate. Had you ever seen a copy of

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1 the actual subpoena?
 2 A. No.
 3 Q. Put that aside. You testified earlier that
 4 you first learned of your father's passing
 5 in -- I apologize --
 6 A. September 30th.
 7 Q. -- September 30th, 2018. How did you come to
 8 learn of your father's passing?
 9 A. I typed his name into Google and saw the New
 10 York Times article of his obituary.
 11 Q. What had prompted you to search for your
 12 father's name that day?
 13 A. I had a feeling, a hunch something might
 14 be -- and, you know, it would -- I think it
 15 had -- like a few months ago I was aware of
 16 the -- the -- the fact that there was another
 17 set of -- another set of districts in court,
 18 so, I mean, I figured if nothing else, I'd
 19 see if there was anything interesting about
 20 that basically really in my role as a -- as
 21 a -- as a student of -- of -- of political
 22 philosophy and -- and other such things.
 23 But, honestly, I -- I -- I had a hunch that
 24 maybe something was wrong.
 25 Q. Once you found out that your father had

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1 passed away, did you reach out to your
 2 mother?
 3 A. Yes.
 4 Q. Did you ask your mother why she hadn't
 5 contacted you to inform you --
 6 A. I didn't.
 7 Q. -- that your father --
 8 A. No.
 9 Q. -- had passed?
 10 A. No.
 11 Q. And why not? You said you didn't --
 12 A. I didn't need to because I don't believe that
 13 she knew how to reach me.
 14 Q. And -- and why do you say that?
 15 MR. JONES: I'm -- I'm -- I'll object
 16 to this line of questioning. I -- I can't
 17 imagine why the -- the circumstances around
 18 Ms. Hofeller's communications with her -- her
 19 mother relating to her father's death could
 20 possibly have any relevance here. It
 21 seems -- it seems vexatious.
 22 MR. SPARKS: Are you going to instruct
 23 the witness not to answer?
 24 MR. JONES: She's not my witness.
 25 A. I was -- let's see. No, I didn't ask her why

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1 she hadn't contacted me.
 2 Q. Had your father -- had there already been a
 3 funeral service for your father at that point
 4 in time when you learned of his passing?
 5 MR. JONES: Object again. It's -- I
 6 think it's inappropriate.
 7 A. I know as much about it as anyone who read
 8 the New York Times obituary.
 9 Q. I take it you did not attend a funeral
 10 service for your father; is that correct?
 11 MR. JONES: Objection.
 12 A. No.
 13 Q. You testified that you -- earlier that you
 14 had not spoken to your father -- the last
 15 time you'd spoken to your father was July
 16 2014 prior to his passing in August of 2018,
 17 correct?
 18 A. Yes.
 19 Q. Had you followed your father's work in any
 20 way between July 2014 and August 2018?
 21 MR. SPARKS: Now I'm going to object.
 22 It's -- my understanding of this proceeding
 23 is that this is to authenticate things that
 24 she turned over and we're now getting to
 25 personal family matters. I'm going to -- are

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1 we going to continue down this line? If
 2 we're going to continue down this line, I am
 3 going to instruct her not to answer.
 4 MS. SCULLY: Not much further, but I
 5 just want -- it is important. It is relevant
 6 and we can talk outside about whether it's
 7 relevant or not, but I'm not going to talk
 8 about that in front of the witness.
 9 MR. SPARKS: Okay.
 10 MS. SCULLY: I'm simply asking if she's
 11 kept track of --
 12 THE WITNESS: Oh, go on ahead.
 13 MS. SCULLY: -- her father's work.
 14 THE WITNESS: Sorry.
 15 MR. SPARKS: Go ahead and answer that
 16 question.
 17 MR. JONES: Can you repeat it? I
 18 forgot it.
 19 Can you -- can you read back the last
 20 question?
 21 MS. SCULLY: I can reask the question.
 22 BY MS. SCULLY:
 23 Q. Between July 2014 and August 6 -- I'm sorry,
 24 July 2014 and August 16th, 2018, have you
 25 followed any of your father's work?

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1 A. That is a very vague question. Maybe you
 2 could be more specific. I was not in
 3 communication with him. In what way would I
 4 follow his work?
 5 Q. Have -- did you read articles about any work
 6 your father was doing in redistricting
 7 between July 2014 and August 16th, 2018?
 8 A. I quite certainly may have read any number of
 9 the many, many newspaper articles about my
 10 father who was rather well-known including
 11 the one I just mentioned, the New York Times
 12 article that was his obituary. I read that.
 13 Q. Did you read any articles or any statements
 14 made by Common Cause about your father's
 15 work?
 16 A. I do not recall having made note of the name
 17 Common Cause until such point as my father
 18 was already deceased. I really wasn't that
 19 involved.
 20 Q. Ms. Hofeller, have you ever been charged with
 21 a crime?
 22 MR. SPARKS: Objection. Ob- -- this is
 23 totally inadmissible. I mean, this is
 24 absolutely inadmissible. Don't answer that.
 25 Go ahead.

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1 MS. SCULLY: You're going to instruct
 2 her not to answer?
 3 MR. SPARKS: I am instructing her not
 4 to answer that question.
 5 MS. SCULLY: Okay.
 6 MR. BRANCH: Okay.
 7 MS. SCULLY: Oh, did I give you one
 8 that's got any markings on it? I don't think
 9 so.
 10 MR. SPARKS: Here, you can --
 11 MS. SCULLY: That's all right. No,
 12 that's all right. I'll give you one in one
 13 second. Sorry. I just..
 14 THE WITNESS: Oh, more -- you would
 15 have --
 16 MR. SPARKS: Please.
 17 THE WITNESS: Yeah. Okay.
 18 (HOFELLER EXHIBIT 5 was marked for
 19 identification.)
 20 MS. SCULLY: I seem to have lost mine.
 21 I'm going to have this one marked also at the
 22 same time.
 23 (HOFELLER EXHIBIT 6 was marked for
 24 identification.)
 25 MR. BRANCH: Thank you.

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1 MR. JONES: These are 5 and 6?
 2 MS. SCULLY: Yes.
 3 BY MS. SCULLY:
 4 Q. Ms. Hofeller, have you had an opportunity to
 5 review the documents that's been put in front
 6 of you marked Exhibit 5 and Exhibit 6?
 7 A. Let me look quickly at 6. Yes.
 8 Q. Yes.
 9 A. Yeah.
 10 Q. Have you seen the documents marked as Exhibit
 11 5 and Exhibit 6 before?
 12 A. I have never seen this page right here
 13 (indicates).
 14 Q. When you're pointing to this page right here,
 15 which one are --
 16 A. This one on top, the first page --
 17 Q. -- you referring to?
 18 A. -- of Exhibit 5, I have never seen this
 19 before. I have seen the -- the -- this page
 20 is familiar to me.
 21 Q. And when you're saying this page, I just want
 22 to reflect for the record on the document
 23 marked as Exhibit 5, you're referring to the
 24 second page which has the caption, Notice of
 25 Hearing on Incompetence Motion in the Cause

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1 and Order Appointing Guardian Ad Litem?
 2 A. Yes.
 3 Q. Okay. And have you seen the third page of
 4 the document?
 5 A. No.
 6 Q. In the document marked Exhibit 5, the second
 7 page that you've seen, did you see that on or
 8 about October 29th, 2018, that there was
 9 going to be a hearing for your mother
 10 regarding her in- -- whether she was
 11 incompetent or not?
 12 A. On or about.
 13 MR. SPARKS: Ask the question again,
 14 please.
 15 BY MS. SCULLY:
 16 Q. Do you recall when you first saw the second
 17 page of the document marked Exhibit 5?
 18 A. Yes.
 19 Q. When?
 20 A. I think it was a few -- few days later.
 21 Q. A few days later from --
 22 A. After it was filed.
 23 Q. -- when?
 24 A. A few days after it was filed. I mean, I
 25 guess that it was filed on the 29th

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1 considering that this is stamped there.
 2 Q. And --
 3 A. I did not see it on the 29th.
 4 Q. Your recollection is that you recall seeing
 5 the second page of the document marked as
 6 Exhibit 5 a few days after October 29th,
 7 2018, correct?
 8 A. Correct.
 9 Q. The document marked as Exhibit 6 which
 10 states, Petition for Adjudication of
 11 Incompetence and Application for Appointment
 12 of Guardian or Limited Guardian, have you
 13 seen that document before?
 14 A. Yes.
 15 Q. When did you first see that document?
 16 A. A few days after it was filed.
 17 Q. You understood that one of the grounds that
 18 was asserted by the petitioner for seeking to
 19 have your mother found incompetent, if you
 20 refer to the --
 21 A. Yes, I understand --
 22 Q. -- second page --
 23 A. -- what's written here.
 24 Q. You had knowledge of that?
 25 A. I have know- -- I had knowledge of what was

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1 written here when I saw the document.
 2 Q. And when you're referring to what was written
 3 here, you are referring to -- on the second
 4 page under Paragraph 5 there are four grounds
 5 listed as the grounds for seeking to have
 6 your mother found incompetent. You
 7 understood those, correct?
 8 MR. SPARKS: Objection as to
 9 characterization. They're allegations. I
 10 understand that I'm parsing -- I'm being a
 11 lawyer here, but they are allegations and
 12 that -- to the extent that you're saying
 13 they're grounds, they're -- they're verified
 14 or they're -- they're true...
 15 Do you understand they're allegations?
 16 THE WITNESS: I understand that they
 17 are allegations.
 18 BY MS. SCULLY:
 19 Q. I'll reask the question, Ms. Hofeller. Did
 20 you -- you understood -- when you're saying,
 21 I understood what is written here, I'm just
 22 trying to make sure we have agreement on the
 23 record that the here you're referring to are
 24 the four allegations that are set forth on
 25 the second page of Exhibit 6 as the alleged

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1 basis for seeking your -- to find your mother
 2 incompetent, you understood that those were
 3 the grounds that were being alleged, correct?
 4 A. I understood that these were the facts set
 5 forth that the petitioner alleges are
 6 grounds, yes.
 7 Q. One of the facts that were set forth that the
 8 petitioner alleged that were grounds was that
 9 the respondent is believed to be under the
 10 influence of a previously estranged child.
 11 Since appearance of child financial assistant
 12 hired for respondent quit her employment upon
 13 concerns of personal safety based on actions
 14 of -- actions of previously estranged child.
 15 Respondent removed appointed attorney-in-fact
 16 over security of funds.
 17 Did you disagree with those assertions?
 18 MR. JONES: I'll -- I'm going to
 19 object.
 20 A. The --
 21 MR. JONES: I think that you're just --
 22 A. The -- you know what --
 23 THE REPORTER: One -- one at a time.
 24 MR. JONES: Hold on. Hold on. I'm
 25 going to object. I -- I think at this point

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1 you're just harassing the -- the witness.
 2 MR. SPARKS: Yeah.
 3 MR. JONES: She's not my witness so I'm
 4 not going to -- but it seems --
 5 A. This is not for me to say.
 6 MR. SPARKS: I believe the same thing.
 7 I -- I believe the same thing. If -- if you
 8 want to ask about the factual basis of this,
 9 I don't understand how it has anything to do
 10 with something so we're going to take a
 11 break -- or can you answer -- there's a
 12 question on the table. Can you answer the
 13 question?
 14 THE WITNESS: No.
 15 MR. SPARKS: Okay. Let's you and I
 16 talk, please, if we can take a break.
 17 Thanks.
 18 Not you -- not you and I.
 19 THE WITNESS: Oh, good. Excellent.
 20 THE VIDEOGRAPHER: Going off the
 21 record. Time is 2:23 p.m.
 22 (Whereupon, there was a recess in the
 23 proceedings from 2:23 p.m. to 2:36 p.m.)
 24 (HOFELLER EXHIBIT 7 was marked for
 25 identification.)

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1 THE VIDEOGRAPHER: Going back on the
 2 record. The time is 2:37 p.m.
 3 BY MS. SCULLY:
 4 Q. Ms. Hofeller, have you had an opportunity to
 5 review the document that's marked Exhibit 7
 6 that's in front of you?
 7 A. Let me -- let me finish.
 8 Q. Please, take your time. Tell me when you're
 9 ready.
 10 A. Hold on. Get my glasses. Is this -- when
 11 was this filed? What is the date on this? I
 12 don't see the date that it was filed. Is it
 13 on the second page?
 14 Q. It's -- the document is dated on Page 4,
 15 the -- November 5th, 2018.
 16 A. Oh, okay. All right. All right. I've
 17 had -- I've reviewed this.
 18 Q. Ms. Hofeller, my first question is, have you
 19 prior to today seen the document that's
 20 marked as Exhibit 7?
 21 A. I don't believe that I did ever see this one,
 22 no. No.
 23 Q. Were you at any point aware that a guardian
 24 ad litem had been appointed in the
 25 incompetency proceedings related to your

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1 mother?
 2 A. A guardian ad litem?
 3 Q. Yes.
 4 A. As in the guardian ad litem, Erin Riddick?
 5 Q. Yes.
 6 A. At -- ask again. Was I at some point aware
 7 that a guardian ad litem had been
 8 appointed --
 9 Q. Yes.
 10 A. -- at -- yes. Yes.
 11 Q. When did you first become aware of the
 12 appointment of a guardian ad litem?
 13 A. I think that that was part of the original
 14 petition. Yes, it was. Erin Riddick was
 15 appointed guardian ad litem when the petition
 16 was filed. When that was served I was aware
 17 of the fact that a guardian ad litem had been
 18 appointed for my mother.
 19 Q. Did you ever have any communications with
 20 Ms. Riddick?
 21 A. No. She never reached out to me.
 22 Q. Did you ever reach out to Ms. Riddick
 23 directly?
 24 A. No.
 25 Q. Did you ever become aware that Ms. Riddick

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1 had concluded that based on the interview of
 2 the petitioner's attorney and a review of
 3 your mother's medical records, that she
 4 believed the petitioner had met the burden to
 5 show reasonable cause to believe that your
 6 mother was --
 7 A. My mother didn't have --
 8 Q. -- incompetent?
 9 A. -- and attorney.
 10 MR. SPARKS: Stop, please.
 11 THE WITNESS: I'm sorry.
 12 MR. SPARKS: Thank you. Go ahead.
 13 THE WITNESS: I'm sorry.
 14 A. No. The answer to your question is no.
 15 Q. Did you at any point in time become aware
 16 that Ms. Riddick had informed the court that
 17 she was concerned that your mother's
 18 well-being and estate were at risk without
 19 the appointment of an interim guardian?
 20 A. Not really, no. No. No.
 21 Q. Were you aware that the guardian ad litem had
 22 informed the court that you had had until
 23 recently an estranged relationship with your
 24 mother?
 25 A. Was I aware that Erin Riddick specifically

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1 said that I had a previously estranged
 2 relationship?
 3 Q. Yes.
 4 A. I don't think I was aware specifically that
 5 Erin Riddick said that, no. No, I wasn't.
 6 (HOFELLER EXHIBIT 8 was marked for
 7 identification.)
 8 MS. SCULLY: Can you provide Exhibit 8,
 9 please, to the witness.
 10 THE WITNESS: I never saw this. I'm
 11 sorry.
 12 BY MS. SCULLY:
 13 Q. Ms. Hofeller, you've had an opportunity to
 14 review the document marked as Exhibit 8?
 15 A. Uh-huh.
 16 Q. I believe you said a moment ago you've not
 17 previously seen the document marked as
 18 Exhibit 8?
 19 A. That's correct.
 20 Q. This is the first time you've seen the
 21 document marked as Exhibit 8?
 22 A. Yep.
 23 Q. You were aware, is it correct, that the court
 24 had entered an order appointing an interim
 25 guardian of your mother, correct? Whether

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1 you'd seen the document or not, you -- you
 2 were aware that the court had appointed an
 3 interim guardian for your mother?
 4 A. At what point?
 5 Q. On or about November 6th, 2018.
 6 A. I was aware that the hearing -- the result of
 7 the hearing was a interim guardian appointed,
 8 I believe, yes.
 9 Q. You were aware that there was an interim
 10 guardian appointed over both your mother's
 11 person and over her estate, correct?
 12 A. You know, again, I am reading these
 13 documents. I am not an attorney in these
 14 matters. In that that is the proper
 15 interpretation of these documents, I was
 16 aware of what these documents said. My
 17 mother's attorney handled the matter from
 18 that point forward, so my awareness would
 19 extend to reading this as a layperson. So
 20 if -- if it says -- if you're asking me was I
 21 aware that -- that this was done, I -- yes,
 22 I -- I guess. I'm not --
 23 Q. Contemporaneous with the proceedings that
 24 were ongoing, the incompetency proceedings,
 25 were you communicating with your mother's

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1 attorney about the proceedings?
 2 A. Well, this is a -- this has -- this had been
 3 going on -- this was on -- going on for quite
 4 a while. At -- at some point I did have
 5 communication with my mother's attorney on
 6 this matter, yes.
 7 Q. And your mother's attorney on this matter I
 8 believe you said was Douglas Noreen?
 9 A. That's right.
 10 Q. Did Mr. Noreen share with you or discuss with
 11 you the fact that an interim guardian over
 12 your mother's estate and over her person was
 13 going to be appointed by the court?
 14 A. Going to be? No.
 15 Q. Did he share with you that it was, in -- that
 16 it did, in fact, occur?
 17 A. I don't think that --
 18 MR. SPARKS: Objection. You're
 19 assuming facts not in -- in evidence and I --
 20 you might want to find out when Doug Noreen
 21 became her mother's attorney. Just a hint.
 22 Go ahead and answer the question to the
 23 best -- if you can, please.
 24 A. I think that the actual -- the -- the moment
 25 when I finally saw the result of that was --

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1 was after Doug Noreen was retained that I saw
 2 the paperwork; otherwise, I would not be --
 3 not really --
 4 Q. Do --
 5 A. -- don't tend to be in communication with the
 6 Wake County court as a -- as a matter of
 7 course.
 8 Q. Did someone represent your mother prior to
 9 Doug Noreen entering his appearance and
 10 representing her in the incompetency
 11 proceeding?
 12 A. No.
 13 Q. When did Mr. Noreen first begin to represent
 14 your mother?
 15 A. I think that his first conversation with her
 16 was one or two days after the preliminary.
 17 Q. What preliminary?
 18 A. The one at which apparently the interim
 19 guardian -- the one requested in these
 20 documents that I explained that I had seen.
 21 Q. One or two days after the document that's
 22 marked Exhibit 6, the petition for
 23 incompetence?
 24 A. Yes. Isn't there a -- yeah. I think that --
 25 if I -- let's see. November 8th rings a bell

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1 for the day that my mother retained Doug
 2 Noreen.
 3 Q. November 8th --
 4 A. Uh-huh.
 5 Q. -- 2018?
 6 A. Yeah.
 7 MS. SCULLY: Can you provide the
 8 witness Exhibit 9.
 9 (HOFELLER EXHIBIT 9 was marked for
 10 identification.)
 11 BY MS. SCULLY:
 12 Q. Ms. Hofeller, actually, before I review
 13 Exhibit 9, I had one follow-up question on
 14 Exhibit 8. If I could turn your attention
 15 back to Exhibit 8.
 16 Were you aware that the interim guardian
 17 of the estate that was appointed in these
 18 proceedings was Everett Bolton?
 19 A. Yes.
 20 Q. Did you have any communications with
 21 Mr. Bolton at any point in time?
 22 A. No.
 23 Q. No?
 24 A. No.
 25 Q. Thank you. Were you aware that the Wake

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1 County Human Services was appointed as the
 2 interim guardian over your mom's person?
 3 A. Was that the name? I thought it was
 4 LifeLinks? Oh, that was the one they
 5 suggested, maybe. I -- I was aware that it
 6 was a -- a -- a body of some sort rather than
 7 a -- an individual.
 8 Q. Did you at any point in time have any
 9 communications with anyone at Wake County
 10 Human Services?
 11 A. No.
 12 Q. Turning your attention to Exhibit 9, I
 13 believe you had an opportunity to review that
 14 a few moments ago, correct?
 15 A. Yeah.
 16 Q. Have you seen the document marked as Exhibit
 17 9 before today?
 18 A. I don't -- okay. Report of the -- of the
 19 guardian ad litem. I think I reviewed it
 20 briefly.
 21 Q. It appears on Exhibit 9, last page, there's a
 22 certificate of service and it reflects
 23 that -- do you see the last page there?
 24 A. Oh. Oh, okay. I -- I was going to say, this
 25 isn't...

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1 Q. On that page it reflects that -- Tom Sparks
 2 is listed as your attorney?
 3 A. Yes.
 4 Q. Yes. At this point in time, No- -- February
 5 6, 2019, was Tom Sparks acting as your
 6 attorney in these proceedings?
 7 MR. SPARKS: What -- what is this
 8 proceeding? I want to make sure you
 9 understand.
 10 MS. SCULLY: Sorry.
 11 BY MS. SCULLY:
 12 Q. The incompetency proceedings for your mother.
 13 A. Yes.
 14 Q. When did you first retain Mr. Sparks in
 15 connection with your mother's incompetency
 16 proceedings?
 17 A. Was it December or January? I don't -- it --
 18 it's all a blur. I think it was early
 19 January. It was after the hol- -- no. It
 20 was --
 21 THE WITNESS: I think you -- you got
 22 back to me during the holiday -- what I felt
 23 was the holiday time. There you go. Thank
 24 you.
 25 A. I'm sorry. I can't keep track of --

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1 Q. At this point --
 2 A. -- all these dates.
 3 Q. -- in time, February 6, 2019, was Mr. Sparks
 4 representing you in any other matters other
 5 than your mom's incompetency proceedings?
 6 A. I -- not -- not -- what else was going on
 7 then?
 8 Q. You were having communications with Mr. Speas
 9 and --
 10 A. Oh. Only in that --
 11 Q. -- Ms. Meese [sic].
 12 A. Only in that -- I'm sorry. Only in that
 13 he -- he was kind enough to allow me to use
 14 his office address as a service address where
 15 I could receive service.
 16 Q. Did you have any communications with your
 17 mother's counsel, Mr. Noreen, about the
 18 subpoena that was issued to her in -- in this
 19 litigation?
 20 A. No, I did not.
 21 Q. I take it you didn't have any communications
 22 with the interim guardian over her estate
 23 about the subpoena that was directed to her
 24 in this litigation, correct?
 25 A. Yes.

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1 Q. And you didn't have any communications with
 2 the interim guardian over her person
 3 regarding the subpoena that was issued upon
 4 her in this litigation, correct?
 5 A. That is correct.
 6 MS. SCULLY: Can you show the witness
 7 Exhibit 10.
 8 (HOFELLER EXHIBIT 10 was marked for
 9 identification.)
 10 BY MS. SCULLY:
 11 Q. Ms. Hofeller, have you had -- had an
 12 opportunity to review the document marked
 13 Exhibit 10?
 14 A. Yes.
 15 Q. Have you seen the document marked as Exhibit
 16 10 before?
 17 A. Yes.
 18 Q. When did you first see the document marked as
 19 Exhibit 10?
 20 A. Sometime after. I really don't know exactly
 21 when. My attorney received --
 22 MR. SPARKS: Some -- sometime after
 23 when? Please tell her.
 24 A. The 7th day of February, 2019.
 25 Q. Were you aware prior to February -- the date

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1 on the document marked as Exhibit 7, February
 2 7, 2019, that there was a plan to dismiss the
 3 incompetency proceedings and submit to the
 4 court the settlement agreement that had been
 5 entered into among the interested parties?
 6 A. You know, I was represented by my attorney at
 7 that time and he was in communication with my
 8 mother's attorney. What I was and wasn't
 9 aware of, that would be really difficult to
 10 say what and when and how and to what degree
 11 because it was being negotiated. I was,
 12 again, represented by counsel so I wasn't
 13 really being spoken to directly on these
 14 matters other than my attorney.
 15 Q. You understood that Exhibit 10 was a motion
 16 to dismiss that was submitted to the court
 17 along with a settlement agreement that was in
 18 the process of being executed, correct?
 19 MR. JONES: And I'll -- I'll -- I'll
 20 object. I think the witness has already
 21 testified that she was communicating with her
 22 attorney here so it seems like anything that
 23 she learned from her attorney would be
 24 privileged.
 25 THE WITNESS: Yes.

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1 MR. SPARKS: Your -- your awareness of
 2 it -- she's asked about your awareness of it.
 3 Will you --
 4 A. Yes. At some --
 5 MR. SPARKS: -- answer her question.
 6 A. -- point I was aware of -- of this, yes.
 7 Q. Do you know if the settlement agreement that
 8 is attached as Exhibit A to what's been
 9 marked as Exhibit 10, do you know if that, in
 10 fact, was ultimately signed by all the
 11 individuals that are --
 12 A. I would --
 13 Q. -- listed on --
 14 A. -- not --
 15 Q. -- Page 6 and 7?
 16 A. I'm sorry. I would not be able to tell you
 17 if this is exactly like the one that's signed
 18 without seeing the signatures on it. I was
 19 not a signator. I would not have a
 20 familiarity to the point where I would be
 21 able to say that this is the one that was
 22 signed.
 23 Q. Is it correct that you were aware that
 24 between the period November 6th, 2018, and
 25 February 7th, 2019, there was a interim

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1 guardian over your mother's estate and over
 2 her person?
 3 A. Yes. I'm trusting you that those are the
 4 right dates.
 5 MS. SCULLY: If I could just have a
 6 moment to look through my notes, I believe I
 7 don't have any further questions. Might have
 8 a couple col- -- follow-ups.
 9 THE VIDEOGRAPHER: Going off the
 10 record. The time is 2:57 p.m.
 11 (Whereupon, there was a recess in the
 12 proceedings from 2:57 p.m. to 2:58 p.m.)
 13 THE VIDEOGRAPHER: Going back on the
 14 record. The time is 2:58 p.m.
 15 EXAMINATION
 16 BY MR. BRANCH:
 17 Q. Good afternoon, Ms. Hofeller. My name is
 18 John Branch. I am counsel for the intervenor
 19 defendants and with the Shanahan Law Group
 20 law firm here in Raleigh. Appreciate you
 21 kind of plowing through things today. I know
 22 there's been a lot and my hope is that I
 23 don't have very many topics for you to cover
 24 and we can get out of here on a fairly quick
 25 basis. But what -- what's going to happen is

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1 I'm going to jump around some because my
 2 colleague has covered 95 percent of what I
 3 had on my list to cover. So if you would be
 4 patient with me if I do that, and if you
 5 don't understand any of the questions that I
 6 pose, want me to restate anything, please
 7 feel free to ask me to do so. I'm happy to
 8 accommodate you as best --
 9 A. Thank you.
 10 Q. -- that I can.
 11 My first question is, what's your home
 12 address?
 13 A. I stated that I wanted that protected.
 14 I'm --
 15 Q. And --
 16 A. -- a survivor of domestic violence and these
 17 documents proliferate at an amazing rate. I
 18 don't believe that it's in my best interest
 19 or -- it's a risk to my safety. That -- that
 20 address is -- I've been able to have it
 21 sealed with courts in the past. I think it's
 22 well established that I'm --
 23 Q. Well, and --
 24 A. -- at risk.
 25 Q. -- with all due respect, ma'am, I -- I don't

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1 know that part of your personal history and
 2 I'm not --
 3 A. Uh-huh.
 4 Q. -- trying to antagonize you by asking you
 5 your home address. However, there's a
 6 process that the parties have agreed to with
 7 regard to having documents held confidential
 8 and highly confidential in the context of
 9 this litigation. And so what I would suggest
 10 is that if you're asking that the -- your
 11 address that you -- that would be -- that the
 12 parties would agree that it is confidential
 13 or highly confidential, I'm certain that we
 14 would not have an objection to it so long as
 15 we --
 16 MR. SPARKS: She can be served at my
 17 office. She's not going to agree to reveal
 18 that. If you want to go to the court and --
 19 and compel that, you can go to the court and
 20 compel that, but --
 21 MR. BRANCH: Okay.
 22 MR. SPARKS: -- she can be served at my
 23 office.
 24 BY MR. BRANCH:
 25 Q. And just -- just so we're clear, for purposes

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1 of any later subpoenas that's served in --
 2 that are served in the context of this
 3 lawsuit, trial subpoenas or any other
 4 documents, you're willing to be served
 5 through counsel here as opposed to at your
 6 house?
 7 MR. JONES: Hold on.
 8 MR. SPARKS: At this time are you
 9 willing to have that done?
 10 THE WITNESS: Yes.
 11 BY MR. BRANCH:
 12 Q. All right. And in the event that you are --
 13 you withdraw that authorization for your
 14 lawyer, would you then be willing to provide
 15 us with your home address so that we can
 16 serve you with process?
 17 MR. JONES: I'll object. She's
 18 outside -- she lives outside the range of the
 19 subpoena range of the court. She already
 20 testified --
 21 MR. BRANCH: I mean, doesn't mean we
 22 can't subpoena her and we have a right to --
 23 in the event that we believe that her
 24 testimony is necessary at trial to subpoena
 25 her to testify and --

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1 MR. JONES: Agree to disagree. If
 2 she's outside the range of the -- the
 3 subpoena range of the court I think you can't
 4 subpoena her.
 5 MR. SPARKS: So that we can move on,
 6 we've been here for a long time, may I
 7 interject with a question or two, please --
 8 MR. BRANCH: Uh-huh.
 9 MR. SPARKS: -- if -- if that's okay
 10 with you because it's out of order?
 11 At this time, Ms. Hofeller, are you
 12 willing to have -- allow me to accept service
 13 of documents on your behalf?
 14 THE WITNESS: I am, yes.
 15 MR. SPARKS: If that changes, will you
 16 provide to me an address at which you can be
 17 served, wherever that address is, and give me
 18 permission to let all these fine people know
 19 and everybody that's -- every attorney
 20 involved in this case know where that address
 21 might be?
 22 THE WITNESS: Yes. Yes, as long as it
 23 doesn't appear on any of these documents.
 24 MR. SPARKS: No. No. No. I didn't
 25 ask you for your home address. I said an

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1 address --
 2 THE WITNESS: Oh, yes.
 3 MR. SPARKS: -- at which you can be
 4 served.
 5 THE WITNESS: Yes. Absolutely.
 6 MR. SPARKS: Okay. Is that -- is that
 7 sufficient, sir?
 8 MR. BRANCH: Yeah, I think that's fine.
 9 MS. SCULLY: Yeah.
 10 MR. SPARKS: Thank you. I'm sorry to
 11 interrupt.
 12 MR. BRANCH: No. No. Well, that was
 13 very helpful so thank you for interrupting.
 14 THE WITNESS: Thanks.
 15 BY MR. BRANCH:
 16 Q. Why did you pick Common Cause to reach out to
 17 you -- or to reach out to with regard to
 18 finding an attorney to represent your mother
 19 in the competency dispute?
 20 MR. JONES: Objection, asked and
 21 answered earlier.
 22 A. I answered that question I thought pretty
 23 thoroughly.
 24 Q. And maybe I missed it, but I'd just like to
 25 go back over it just for a little bit. I

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1 mean, why -- again, why Common Cause?
 2 MR. JONES: Objection, asked and
 3 answered.
 4 MR. BRANCH: And, again, she can answer
 5 the question.
 6 A. They are local. They're local and I needed
 7 to, you know, ascertain who was local as far
 8 as local attorneys, and their knowledge of
 9 the politicization of my family affairs as it
 10 pertains to anyone who is involved on this
 11 level with politics, it seemed that they
 12 would comprehend that.
 13 Q. And why -- why did it seem like Common Cause
 14 would have a comprehension of the
 15 politicization of your family's affairs?
 16 A. Because all of the attorneys involved in all
 17 of these matters would have an understanding
 18 of it.
 19 Q. So that's because Common Cause had attorneys
 20 that had been involved in legal matters with
 21 knowledge of the politicization of your
 22 family's affairs?
 23 A. How shall I put this? Your average American
 24 doesn't understand what redistricting even
 25 is, so attorneys that are involved in matters

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1 that pertain to it are much more likely to
 2 understand the importance of my father's
 3 position on these matters.
 4 Q. Okay. And prior to reaching out to Common
 5 Cause about the -- about the topics on which
 6 you reached out to them, you were aware that
 7 they -- that Common Cause was involved in
 8 litigation regarding redistricting?
 9 A. Yes.
 10 Q. And were you -- and you were aware that they
 11 had taken positions adverse to those of your
 12 father or your father's businesses?
 13 A. You know, my father --
 14 MR. JONES: Oh, object. Object.
 15 MR. SPARKS: She --
 16 MR. JONES: Ans and ans --
 17 MR. SPARKS: She --
 18 MR. JONES: Asked and answered.
 19 MR. SPARKS: She actually said that --
 20 THE WITNESS: Yeah.
 21 MR. JONES: You just changed the word
 22 antagonistic to adverse. It's been asked and
 23 answered multiple times.
 24 MR. BRANCH: Well, then it's a --
 25 A. And this wasn't my father's --

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1 MR. BRANCH: -- different question.
 2 A. -- position. This was just what he did.
 3 MR. SPARKS: Please.
 4 THE WITNESS: I'm sorry.
 5 BY MR. BRANCH:
 6 Q. Was your father retained by parties in
 7 litigation with Common Cause?
 8 MR. JONES: Objection. There's no
 9 establishment of any foundation.
 10 MR. BRANCH: I'm asking if she has
 11 knowledge of that.
 12 A. I don't know the details of how my father was
 13 actually involved in all of this. I don't
 14 know the details. I -- he -- he was all over
 15 the country all the time my whole entire
 16 childhood. I don't know when he signed on
 17 with who in what capacity, whether he was
 18 working for the RNC, whether he was a
 19 consultant. I don't know those details. It
 20 would be very -- I don't know. It seems
 21 almost like it -- it -- we're trying to
 22 establish that I would misstate. I would
 23 rather just go ahead and say that I don't
 24 know these details. If you continue to press
 25 me to tell you yes or no, eventually there is

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1 an idea that I will say that I know something
 2 that I wasn't aware of.
 3 Q. And I -- to be clear, I don't know is a
 4 perfectly valid answer. If you don't know,
 5 you don't know. That's fine. I'm not trying
 6 to press you for a certain answer. I'm
 7 trying to understand what it is you do
 8 actually know.
 9 A. And, again, I've really tried to --
 10 MR. JONES: There's no --
 11 THE WITNESS: Okay.
 12 A. I tried to address it before.
 13 Q. And so are you aware that the redistricting
 14 maps at issue in this case are ones that were
 15 passed by the North Carolina General Assembly
 16 in 2017?
 17 A. Passed by? You mean -- no. No, I wasn't
 18 aware.
 19 Q. Okay. Well, are you aware that redistricting
 20 maps are enacted laws by the North Carolina
 21 General Assembly in North Carolina?
 22 A. No.
 23 Q. And you weren't -- I believe you just
 24 testified that you weren't aware that the
 25 maps that are being challenged by the

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1 plaintiffs in this lawsuit are ones that were
 2 enacted in 2017?
 3 A. No. I didn't know --
 4 Q. Okay.
 5 A. -- any of those state- -- specifics.
 6 Q. If -- on the assumption that I'm correct that
 7 the General Assembly passed the maps that are
 8 at issue in this litigation in 2017, would it
 9 be correct to say that you had no
 10 communications with your father about those
 11 maps that were passed?
 12 A. I don't know when he started drawing those
 13 maps. My fa- -- I was an only child. My
 14 father and I spoke about a lot of matters
 15 right up until the point when I didn't speak
 16 to him anymore. So I have no idea whether or
 17 not the maps that he was drawing the last
 18 time I spoke to him were those maps. I would
 19 have no way of knowing that.
 20 Q. So you have no way of knowing one way or
 21 another?
 22 A. That's right.
 23 Q. Okay. Did you -- what's -- I'm not trying to
 24 raise the same concerns you have about your
 25 address, but I do have some questions about

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1 the use of your phone. So --
 2 A. The use of my what?
 3 Q. Your --
 4 MS. SCULLY: Phone.
 5 BY MR. BRANCH:
 6 Q. Your cell phone. And so I'm going to ask you
 7 what your cell phone number is so...
 8 MR. JONES: I'll --
 9 BY MR. BRANCH:
 10 Q. Are you willing -- are you willing to share
 11 that for the --
 12 A. No.
 13 Q. Okay. Let me ask the question a different
 14 way. Have you used the same -- do you have a
 15 smartphone that you use -- that is associated
 16 with the regular phone number that you use
 17 and give out to people?
 18 A. Forgive me for being a little bit concerned
 19 about where -- I mean, I -- what can I say?
 20 I mean, I -- the -- what -- what period of
 21 time are we talking about here? I mean...
 22 Q. Current -- let's say today do you have an
 23 iPhone?
 24 A. Do I have --
 25 Q. Do you have --

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1 A. -- a smartphone?
 2 Q. -- an Android? Yes. That --
 3 A. Yes, I have a smartphone.
 4 Q. Okay. And what kind of a phone is it? Is it
 5 an iPhone, Android?
 6 MR. JONES: Ob- -- object. This is --
 7 this is ri- -- ridiculously irrelevant.
 8 MR. BRANCH: It is not.
 9 BY MR. BRANCH:
 10 Q. You can answer.
 11 A. It's -- it's either an iPhone or an Android.
 12 Q. All right. And it's one specific device. Is
 13 that the same device that you have used since
 14 September 30th of 2018?
 15 A. No.
 16 Q. Okay. How many different devices have you
 17 used since September 30th of 2018 associated
 18 with your primary telephone number?
 19 A. Two.
 20 Q. Two?
 21 A. Two, I think, yeah.
 22 Q. Okay. Do you --
 23 A. I don't know. These were not associated with
 24 the same phone number. I -- I'm a popular
 25 person. I don't tend to just give my phone

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1 number out and I also tend to -- to find that
 2 it's better when you're on Google to -- to
 3 not be quite as consistent as most of -- most
 4 people are.
 5 MR. SPARKS: Do you need to take a
 6 break?
 7 THE WITNESS: No. No, I don't.
 8 A. So, no, it hasn't been the same phone number.
 9 Q. Okay. And -- all right. So the question I
 10 had was actually as to the device that you
 11 use, the physical hardware. And what I was
 12 asking, and it was based on an assumption
 13 that I think turned out not to be correct,
 14 was how many different devices have you used
 15 since September 30th of 2018 to present day?
 16 A. I think it's two. Two.
 17 Q. Okay. Okay. Do you -- did you change phone
 18 numbers when you changed devices at some
 19 point during that period of time?
 20 A. Yes.
 21 Q. Okay. Can you tell me approximately when
 22 that was?
 23 A. Late last year, I think.
 24 Q. Towards the -- do you think possibly
 25 December? I'm not looking for a specific

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1 date.
 2 A. Possibly, yeah.
 3 Q. Okay. Can you tell me why you switched phone
 4 numbers and devices?
 5 A. Old -- old device, running out of storage. I
 6 didn't have a contract so...
 7 Q. Okay. Did you keep the old device?
 8 A. For a while I did.
 9 Q. And where is it now?
 10 A. I gave it to a friend. Cleared it off, reset
 11 it to factory settings, and gave it to a
 12 friend of mine who couldn't afford to buy a
 13 new one.
 14 Q. Okay. And when did you do that
 15 approximately?
 16 A. January, February, sometime in there.
 17 Q. All right. And is that -- you testified
 18 earlier when you were asked about the --
 19 being -- whether you're in possession of the
 20 text messages with Mr. Speas that some of the
 21 old text messages had been deleted. Were
 22 they -- when you talked about --
 23 A. That's why I got a --
 24 Q. -- them being --
 25 A. -- new phone.

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1 MR. SPARKS: Let him --
 2 THE WITNESS: I'm sorry.
 3 MR. SPARKS: Let him answer --
 4 THE WITNESS: I'm sorry.
 5 MR. SPARKS: -- ask the question,
 6 please.
 7 BY MR. BRANCH:
 8 Q. Yeah. Well, I think -- you -- you can go
 9 ahead and explain. Can you tell me what
 10 happened?
 11 A. Yeah. My phone started running out of
 12 storage, it couldn't do the updates, and as
 13 it ran more and more out of storage, it was
 14 dropping -- it was dropping things like text
 15 messages and -- yeah. Both the iPhones and
 16 the androids do that so...
 17 Q. Okay. And then after it was dropping text
 18 messages, you went and got a new phone?
 19 A. You know, as -- at my earliest convenience I
 20 got a new phone.
 21 Q. Okay. And -- and to the extent that
 22 you've -- well, strike that.
 23 Has -- have you encountered the same
 24 problems with dropping phone calls and text
 25 messages since you've had your new phone?

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1 A. I don't think so.
 2 Q. Okay. So you wouldn't have lost any of the
 3 text messages that have been sent to or from
 4 you with regard to the new phone?
 5 A. I don't suppose that I would have.
 6 Q. Okay. And the old phone, I believe you
 7 testified that you gave -- you erased the
 8 information that was on the old phone and
 9 gave it to a friend of yours in January or
 10 February of this year?
 11 A. Sometime early this year, yeah.
 12 Q. Okay. What -- I'm shifting topics back to
 13 the -- the devices that you turned over to
 14 Arnold & Porter in connection with the
 15 subpoena. What computers or other electronic
 16 devices did you use to read the contents of
 17 those hard drives or thumb drives?
 18 A. A laptop.
 19 Q. Was it just one laptop?
 20 A. Yes.
 21 Q. And do you still have possession of the
 22 laptop?
 23 A. Yes, I do.
 24 Q. Okay.
 25 MR. BRANCH: All right. If we can go

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1 off the record for a couple minutes, I'm just
 2 about done.
 3 MS. SCULLY: I want to talk about
 4 something.
 5 THE VIDEOGRAPHER: Going off the
 6 record. The time is 3:15 p.m.
 7 (Whereupon, there was a recess in the
 8 proceedings from 3:15 p.m. to 3:18 p.m.)
 9 THE VIDEOGRAPHER: Going back on the
 10 record. The time is 3:18 p.m.
 11 MR. BRANCH: Nothing further.
 12 MR. SPARKS: Nothing from me.
 13 MR. JONES: Nothing from me either.
 14 THE VIDEOGRAPHER: This concludes the
 15 video deposition. Time going off the record
 16 is 3:18 p.m.
 17 [SIGNATURE RESERVED]
 18 [DEPOSITION CONCLUDED AT 3:18 P.M.]
 19
 20
 21
 22
 23
 24
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1 ACKNOWLEDGEMENT OF DEPONENT
 2
 3 I, STEPHANIE HOFELLER, declare under the
 4 penalties of perjury under the State of North
 5 Carolina that I have read the foregoing 212 pages,
 6 which contain a correct transcription of answers
 7 made by me to the question therein recorded, with
 8 the exception(s) and/or addition(s) reflected on
 9 the correction sheet attached hereto, if any.
 10 Signed this, the ____ day of
 11 _____, 2019.
 12
 13
 14 _____
 15 STEPHANIE HOFELLER
 16
 17 State of: _____
 18 County of: _____
 19 Subscribed and sworn to before me this
 20 ____ day of _____, 2019.
 21
 22 _____
 23 Notary Public
 24 My commission expires: _____
 25

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1 STATE OF NORTH CAROLINA)
) CERTIFICATE
 2 COUNTY OF WAKE)
 3
 4 I, LISA A. WHEELER, RPR, CRR, Court
 5 Reporter and Notary Public, the officer before whom
 6 the foregoing proceeding was conducted, do hereby
 7 certify that the witness whose testimony appears in
 8 the foregoing proceeding was duly sworn by me; that
 9 the testimony of said witness was taken by me to
 10 the best of my ability and thereafter transcribed
 11 by me; and that the foregoing pages, inclusive,
 12 constitute a true and accurate transcription of the
 13 testimony of the witness.
 14 I do further certify that I am neither
 15 counsel for, related to, nor employed by any of the
 16 parties to this action and, further, that I am not
 17 a relative or employee of any attorney or counsel
 18 employed by the parties thereof, nor financially or
 19 otherwise interested in the outcome of said action.
 20 This the 20th day of May, 2019.
 21
 22 _____
 23 Lisa A. Wheeler, RPR, CRR
 24 Notary Public #19981350007
 25

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1 ERRATA SHEET
 2 Case Name: COMMON CAUSE, ET AL. VS. DAVID R.
 3 LEWIS, ET AL.
 4 Witness Name: STEPHANIE HOFELLER
 5 Deposition Date: FRIDAY, MAY 17, 2019
 6 Page/Line Reads Should Read
 7 / | | |
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 20 / | | |
 21 / | | |
 22 / | | |
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 24 _____
 25 Signature Date

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EXHIBIT C

David Daley statement in response to North Carolina GOP brief. |

1. The North Carolina GOP's brief filed on June 17, 2019 contains a number of inaccuracies and misleading statements that creates a faulty narrative

2. The filing states that I am a senior fellow at Common Cause. I am not, and have never been, a senior fellow or held any other title with Common Cause. I am a senior fellow at FairVote, a nonpartisan organization that is also not connected with Common Cause. A simple Google search would have made this clear; Google my name and senior fellow and the entire page is filled with results mentioning FairVote.

3. When I pointed out this inaccuracy to the Republican lawmaker David Lewis, a named defendant in this case, he insisted that I was a senior fellow at Common Cause by citing a mention of me on the Common Cause web site. That very mention, however, clearly identifies me as a senior fellow at FairVote.

4. The NC GOP failed to do the most basic biographical fact-checking before misidentifying me in their legal filing. Moreover, their entirely preventable error creates a false implication that I played a role in steering this material to Common Cause. Any such implication would be entirely false and serve only to confuse the Court.

5. Indeed, if the intention of the brief is to suggest that I played a role in guiding documents to Common Cause, this is 100 percent incorrect. I was not aware that Stephanie Hofeller possessed these documents, of their contents, or that she was bringing them to Common Cause until I read reports in the media. I did not know these documents existed. And I had no contact with Ms. Hofeller of any kind -- in person, over the phone, electronically -- during any of this time.

6. After the report in the New York Times, I became aware that Ms. Hofeller became aware of the potential importance of the documents because she had heard me speak about them or read a media report in which I discussed the potential of her father leaving valuable historical documents behind after his death. It was only my speculation, when asked by another reporter, prior to the publication of Ms. Hofeller's deposition, that this may have happened at a Common Cause conference in North Carolina. Only later did I learn, after the release of Ms. Hofeller's deposition, that she read my remarks instead in the Raleigh News and Observer. My early speculation was incorrect. I had no inside knowledge of how these documents were presented, nor was I aware or in possession of any specific details about any discussions between Ms. Hofeller and Common Cause. Any such suggestion would be false and incorrect. The pairing of my casual speculation against sworn depositions by those involved serves only to create confusion where none should exist.

7. I was not involved, was not aware of, and played no role, in any communications between Ms. Hofeller and Common Cause, or any of its representatives, at any time, or that led to the

production of these documents. My only role -- unbeknownst to me -- was wondering aloud in an interview about whether Thomas Hofeller left any significant papers behind that would shed light on gerrymanders of historical interest. Any insinuation that I steered those documents or played any other role is false -- and given the NC GOP's sloppy misattribution of my biographical details, potentially reckless as well.

EXHIBIT D

Jones, Stanton

From: Tom <Tom@fidlitlawgroup.com>
Sent: Wednesday, May 29, 2019 11:44 AM
To: Jones, Stanton
Subject: RE: Stephanie Hofeller approval to use census-related documents in separate census litigation

External E-mail

Confirmed.

Tom Sparks

Fiduciary Litigation Group
223 S. West Street, Suite 900
Raleigh, NC 27603
(919) 229-0845
Fax: (919) 263-1082

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Wednesday, May 29, 2019 10:02 AM
To: Tom <Tom@fidlitlawgroup.com>
Cc: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Subject: Stephanie Hofeller approval to use census-related documents in separate census litigation

Tom -- This email is to confirm that, as you and I just discussed by phone with Stephanie Hofeller, Stephanie confirmed that she approves of our submitting the census-related documents we discussed, which were on the hard drives she produced in response to our subpoena, in the separate census litigation in federal court.

Please reply to this email to confirm.

Many thanks.

Stanton

R. Stanton Jones
Partner

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5563
Stanton.Jones@arnoldporter.com | www.arnoldporter.com

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<http://www.arnoldporter.com>

EXHIBIT E

From: Jones, Stanton
Sent: Tuesday, April 9, 2019 5:03 PM
To: Strach, Phillip J.; John Branch
Cc: Cox, Paul; Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; Denton Worrell; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P.; Theodore, Elisabeth; Jacobson, Daniel
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance
Attachments: Index -- HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY.zip

Phil:
Because Legislative Defendants and Intervenor Defendants have refused our proposed filtering approach, and because we are now awaiting the Court's resolution of this issue, we have not actually conducted the filtering. As such, we do not know the volume of data that will remain after filtering.

While we have not received an index for all the materials that were produced in response to the subpoena, we have received a partial index of file names and file paths for some of those materials. I've attached that partial index.

Please note that, because some of the file names and file paths in this partial index indicate personal sensitive information of Dr. Hofeller and his family, we have marked the index at HIGHLY CONFIDENTIAL / OUTSIDE ATTORNEYS' EYES ONLY pursuant to Paragraph 3 of the Consent Protective Order.

Regards,
Stanton

From: Strach, Phillip J. [mailto:phil.strach@ogletree.com]
Sent: Thursday, April 04, 2019 11:39 AM
To: Theodore, Elisabeth; John Branch
Cc: Jacobson, Daniel; Jones, Stanton; Cox, Paul; Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; Denton Worrell; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth:

As I've previously noted we oppose any filtering but we won't know when we can respond to your motion until we've seen it. In the meantime, please let us know how much data is in the non-filtered materials and also send us an index of the files.

Thanks.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Thursday, April 04, 2019 10:13 AM

To: John Branch <JBranch@shanahanlawgroup.com>

Cc: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Cox, Paul <pcox@ncdoj.gov>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>

Subject: Re: Common Cause v. Lewis -- notice of subpoena compliance

John, apologies for the multiple emails. One amendment to my prior email -- Stroz has informed us that if the court does permit the filtering, then they could likely arrange it so that your vendor is present to observe the filtering process if that's what you want for comfort as to the process. As I mentioned, we will get the motion on file.

Best,
Elisabeth

On Apr 4, 2019, at 9:29 AM, Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com> wrote:

John, thanks for your response. We understand your position on the filtering, but as mentioned, this is something that we are going to bring to the court for resolution. It is apparent that much of this process will depend on the court's answer to whether we can filter, and therefore we believe it is most efficient to receive an answer from the court on that and then work out the mechanics of the copying process after. To clarify, though, if the court permits us to do the filtering, that would mean that our vendor would perform the filtering in its lab on its own, create a new image of just the non-filtered items, and then provide your vendor access to that new image.

Pursuant to the court's case management order, could you tell us by 2 pm today if you will respond to the motion regarding the filtering, how many days you would like to respond, and your availability for a hearing next week if the court decides to hold a hearing?

Best,
Elisabeth

On Apr 3, 2019, at 5:24 PM, John Branch <JBranch@shanahanlawgroup.com> wrote:

Dan,

Thanks for the information on the lack of objections and the date of receipt.

The rule provides that we get access to what you all received, without filtering. I am not saying that there is no possible limitation at all on the use of the information, especially since I have not seen the content of the drives. However, to the extent that Plaintiffs received the drives we get to inspect and copy the entirety of what Plaintiffs have.

Also, let me know what potential costs you all are concerned about on your end. I'm not sure I understand where they will come from given that Plaintiffs would simply be making the drives available to our vendor to copy at Plaintiffs' vendor's location, but I could be missing something.

Best regards,

John

John E. Branch III | Partner

<image001.png>

128 E. Hargett Street | Third Floor
Raleigh, NC 27601

Phone: (919) 856-9494

Email: jbranch@shanahanlawgroup.com

Please see the IRS Circular 230 Notice and the Confidentiality Notice below before reading this email.

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From: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>

Sent: Wednesday, April 3, 2019 12:33 PM

To: John Branch <JBranch@shanahanlawgroup.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D.

<Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark

<MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar

<amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

John,

Thanks for your response. With respect to the issue of copying, if we are understanding your email, you are asking for your vendor to go the office of our vendor (Stroz Friedberg) in Washington, DC, and make a copy of all of the hard drives and thumb drives on site yourself, without taking the originals of the drives. Is that correct? If so, we are amenable to that approach (subject to resolution of the separate issue of the medical and other personal files, discussed below), but that is different from what we interpreted Phil as proposing yesterday. If we went this route, we would pass on any costs that we and Stroz incur in facilitating this process. John and Phil, could you each let us know if this approach is acceptable to you? And Paul, if the Intervenor Defendants and Legislative Defendants are making their own copies on site at Stroz in DC, please let us know how the State Defendants would like to proceed.

John, your email does not address the issue of filtering out medical and sensitive personal information, without any party reviewing it or any further dissemination. Could you please let us know Intervenor-Defendants position on this issue? As for your other questions, we explained several emails down on this chain (on which you were copied) that we received the materials from Ms. Lizon on March 13. Per the attached, the subpoena to Ms. Lizon was issued on February 13, several weeks before the intervenors became parties to the case. Neither Ms. Lizon nor any party asserted any objections to the subpoena.

Bet,
Dan

[Daniel Jacobson](#)
Senior Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5602
Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: John Branch <JBranch@shanahanlawgroup.com>
Sent: Wednesday, April 3, 2019 11:37 AM
To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell

<DWorrell@shanahanmcdougal.com>; Nate Pencook
<NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>;
Mackie, Caroline P. <CMackie@poynerspruill.com>;
z.zz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>;
melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>;
Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth
<Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton,

I don't think you are correct in your reading of Rule 45(d1). Under the rule, Defendants have an opportunity to both inspect and copy the hard drives and thumb drives you received. Rule 45(d1) states:

(d1) Opportunity for **Inspection** of Subpoenaed Material. - A party or attorney responsible for the issuance and service of a subpoena shall, within five business days after the receipt of material produced in compliance with the subpoena, serve all other parties with notice of receipt of the material produced in compliance with the subpoena and, upon request, shall provide all other parties a reasonable opportunity to **copy and inspect** such material at the expense of the inspecting party.

(emphasis added). Thus, under Rule 45(d1), Defendants have an opportunity to both inspect and make copies of the materials you have received. Plaintiffs must provide such an opportunity to Defendants. Inspection of the drives Plaintiffs received pursuant to the subpoena is expressly provided for under Rule 45(d1), and Defendants are well within their rights to both ask to inspect the drives and make their own copies of them. This is only logical – it would be inherently unfair for any party to receive items and information pursuant to a subpoena but then not make them available to all parties in the litigation.

Intervenor-Defendants are hereby exercising their right for a reasonable opportunity to inspect and copy the four hard drives and eighteen thumb drives produced by Ms. Lizon. We request either that you provide the original hardware that you received to our vendor for copying or that you allow our vendor to copy the hardware on site.

In addition, while it is possible I was not copied on earlier emails due to our later entry in the case, it is unclear to me when Ms. Lizon provided the drives to Plaintiffs, how they were sent to you all, and whether she asserted any objections or other rights in responding to the subpoena or searching for responsive documents. Accordingly, please provide us with any correspondence exchanged between Plaintiffs' counsel and Ms. Lizon regarding the subpoena and identify the date or dates on which Plaintiffs received the four hard drives and eighteen thumbdrives produced in response to the subpoena.

Best regards,

John Branch

John E. Branch III | Partner

<image001.png>

128 E. Hargett Street | Suite 300
Raleigh, NC 27601

Phone: (919) 856-9494

Email: jbranch@shanahanlawgroup.com

Please see the IRS Circular 230 Notice and the Confidentiality Notice below before reading this email.

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From: Jones, Stanton [<mailto:Stanton.Jones@arnoldporter.com>]
Sent: Wednesday, April 03, 2019 8:59 AM
To: Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <SBrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, if I'm understanding your email correctly, you are asking us to give you the originals of the media (i.e., the original hard drives and thumb drives we received from Ms. Lizon). Please let us know if that's not what you are requesting, but if it is, that is not something we are under any obligation to do. If you have authority to the contrary, please let us know. We believe our obligation is to provide you with copies of the materials we received in response to the subpoena, and the most straightforward way to do that is for our vendor to make forensically sound copies and send them to you or

your vendor. Indeed, we note that this is exactly the procedure you are following with respect to our request to copy and inspect the General Assembly computer purportedly used to create the 2017 plans.

With respect to filtering out sensitive personal information, we intend to go to the court on that. We will file a motion with the court requesting permission to follow the approach we have proposed, but if the court does not authorize such and instead orders us to provide you complete copies of everything on the media, including the sensitive and irrelevant personal information, we will of course comply with the court order.

We would like to make our motion swiftly to facilitate the provision of this material to you and to the State Defendants as quickly as possible; we would have made the motion last week, when we first proposed the filtering process, if we had received your response at that time. We asked you yesterday to advise us of when you would like to file a response to our motion, and when you are available for a telephonic hearing, but have not heard back on those questions. Please let me know by 2pm today when you would like to file a response, and when you are available for a hearing. We can be available Monday or Tuesday of next week.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Tuesday, April 02, 2019 5:30 PM
To: Jones, Stanton; Cox, Paul
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel; Gersch, David P.; Theodore, Elisabeth
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton,

The Rules require plaintiffs to allow us a “reasonable opportunity to copy and inspect such material at the expense of the inspecting party.” We will of course bear the expense of any copy we make for our own use. We can provide you the name and address of our vendor to which the files can be sent to make our copy. In the alternative, we can have the vendor go to your site to retrieve the materials. We do not have any other cost-sharing obligations beyond that based on the plain text of the rule. The Rule also does not provide for a party filtering the data it received from a subpoena prior to making it available for inspection and copying. There is no basis for your refusal to allow us to inspect and copy all of the material as the Rule allows. Please confirm that you will allow us to make this inspection and copying and we will immediately provide you with instructions for shipping the materials to our vendor for copying (or alternatively make arrangements to retrieve the materials).

Thanks.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax:

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Tuesday, April 02, 2019 9:52 AM
To: Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, your email below raises two issues.

First, on the issue of cost, Rule 45(d1) of the North Carolina Rules of Civil Procedure expressly states that our obligation is to copy and provide the materials we received in response to our subpoena "at the expense of the inspecting party." To my knowledge, we have no obligation to copy and provide these materials unless and until you (and others who have requested copies) agree to bear the expense. If you have a different understanding, please provide authority for it. Alternatively, let us know if legislative defendants agree to bear the expense per Elisabeth's email below. Note that state defendants have already agreed to split the quoted expense with legislative defendants.

Second, on the issue of medical and other apparently sensitive personal information, we fail to see how it is in anyone's interest to copy and disseminate such information, which obviously has no bearing on this case but raises serious privacy concerns. We would be happy to send you a list of the keywords we would use to search file and folder names for materials we would segregate out and not review or disseminate.

Please let us know by 6:30pm ET today whether legislative defendants will revisit their position on both issues and agree to our approach. If you do not consent to this approach, we will file a motion seeking clarification as to the cost issue and the court's approval to follow our approach on the second issue. Pursuant to the March 13 Case Management Order, please let us know by 6:30pm ET today when you would like to file a response to our motion and also your availability for a hearing on the motion early next week.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Monday, April 01, 2019 9:05 PM
To: Cox, Paul; Theodore, Elisabeth; Jones, Stanton
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard;

Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch;
dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.;
zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel;
Gersch, David P.

Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth: we do not agree with the proposed process or the splitting of the costs. We believe plaintiffs should comply with the North Carolina Rules of Civil Procedure and produce to us all of the subpoenaed files, without filtering. We are capable of protecting the confidentiality of the materials. Cost-shifting can occur after the final judgment in the case. Please produce these files immediately. Thanks. Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax:
919-783-9412

phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Cox, Paul <pcox@ncdoj.gov>

Sent: Monday, April 01, 2019 12:10 PM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton
<Stanton.Jones@arnoldporter.com>; Strach, Phillip J.
<Phil.Strach@ogletreedeakins.com>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D.

<Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark

<MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar

<amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>;

Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch

<JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook

<NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>;

Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com;

melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>;

Gersch, David P. <David.Gersch@arnoldporter.com>

Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth,

Thank you for this additional info and clarification.

The State Defendants would be willing to split with the Legislative Defendants the quoted cost for a copy of the materials.

Paul

<image002.jpg>

Paul M. Cox

Special Deputy Attorney General

Phone: (919)716-6932

pcox@ncdoj.gov

114 W. Edenton St., Raleigh, NC 27603

Please note messages to or from this address may be public records.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Thursday, March 28, 2019 3:45 PM
To: Cox, Paul <pcox@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Hi Paul,

We've now received the cost estimate from our vendor, which is \$3500 to \$4000 total for creating two copies (one for the State Defendants and one for the Legislative Defendants). That does not include the cost of processing the data or performing the keyword searching to filter out sensitive documents as described in the prior email; it is just the cost of creating physical images of each of the 22 external drives after the filtering is complete. The cost of the copying is driven largely by the size of the materials and the cost of creating images of physical drives. The size of the materials makes it infeasible to send via FTP. Let us know if you would like to discuss this further.

Legislative Defendants – please let us know whether you agree to the process we have proposed and to splitting the cost, or if you would like to discuss.

Best,
Elisabeth

From: Cox, Paul [<mailto:pcox@ncdoj.gov>]
Sent: Thursday, March 28, 2019 10:01 AM
To: Theodore, Elisabeth; Jones, Stanton; Strach, Phillip J.
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Hi Elisabeth,

This plan seems reasonable to the State Defendants. We're really only interested in having a copy of whatever information that the plaintiffs retain from the subpoena. Once you decide what you believe is properly the subject of discovery, we can send you an FTP link or work out some other means of transferring the files. We

can agree to treat all of the documents as confidential when so designated. I'm not sure what cost would be involved in transferring a copy of the files that you are already processing for your own purposes. We're happy to discuss to better understand.

Paul

<image002.jpg> **Paul M. Cox**
Special Deputy Attorney General
Phone: (919)716-6932
pcox@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603

Please note messages to or from this address may be public records.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, March 27, 2019 5:27 PM
To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Counsel:

In the course of our vendor's processing of the materials we received in response to our subpoena of Ms. Lizon, it has become apparent from the file and folder names that those materials may include personal information, such as tax returns and medical and family information. We have not opened any of these files and will not do so. Because the files at issue appear from their names to be sensitive, personal, and plainly irrelevant to the litigation, we do not believe that it would be appropriate or in the interest of any party to further disseminate these files. In light of Legislative Defendants' and State Defendants' requests for copies of the materials, we would propose the following approach.

First, our vendor Stroz would search for keywords in file and folder names that would indicate that the underlying document contains personal information, such as "tax," "medical," and the names of Dr. Hofeller's family. Our vendor would then pull out these personal files and then make a copy of everything that remains, and provide you with that copy.

Second, because the keyword search may be underinclusive, when we provide you with the remaining materials, we will designate all sensitive personal information that may remain, including personal financial, family, and health information, as confidential pursuant to the parties' forthcoming protective order.

Third, with respect to documents that were identified by the keyword search, we will provide Ms. Lizon with the option of having them returned to her. Again, we would not look at any document received in response to the subpoena to Ms. Lizon unless we are also providing that document to the other parties who have requested copies of the materials.

If this approach sounds acceptable to you, we can obtain a cost estimate. Please let us know if you would like to discuss this further.

Best,
Elisabeth

Elisabeth S. Theodore

Partner

Arnold & Porter

601 Massachusetts Ave., NW

Washington | District of Columbia 20001-3743

T: +1 202.942.5891

Elisabeth.Theodore@arnoldporter.com | www.arnoldporter.com

From: Jones, Stanton

Sent: Tuesday, March 26, 2019 2:57 PM

To: Strach, Phillip J.

Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Cox, Paul; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.

Subject: Re: Common Cause v. Lewis -- notice of subpoena compliance

Phil:

We received the electronic media on Wednesday, March 13, and provided them to the vendor the same day.

The vendor is Stroz Friedberg.

I'm not aware of any obligation to consult you on which vendor we'd use to process materials we received in response to our subpoena. We aren't asking legislative defendants to share the cost of processing the materials, only the cost of providing a copy to you, per Rule 45. Certainly let me know if you have a different understanding.

The vendor is still processing the materials.

We are inquiring with the vendor about the cost, logistics, and timing of providing you a copy. Same for the state defendants who also have requested a copy. We will let you know as soon as we have this information.

Regards,
Stanton

Sent from my iPhone

On Mar 26, 2019, at 10:11 AM, Strach, Phillip J. <phil.strach@ogletree.com> wrote:

Stanton: Thanks. Please let us know the date the media was received by plaintiffs, when plaintiffs sent them off to be processed, and which entity is being used to process the media. I note for now that we were not asked for our input on which entity to use or provided any information about possible costs prior to sending the data to be processed. Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Tuesday, March 26, 2019 10:02 AM
To: Strach, Phillip J. <Phil.Strach@ogletreedekins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, the items we received were all electronic media, namely four external hard drives and 18 thumb drives. We are having them processed and will let you know when we have them in a form that can be shared, as well as the cost of sharing under Rule 45.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Tuesday, March 26, 2019 9:54 AM
To: Jones, Stanton; Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencoock; Cox, Paul
Cc: Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton:

Thanks for this notice. Please send us a copy of the materials received today.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Wednesday, March 20, 2019 9:12 PM
To: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Strach, Phillip J. <Phil.Strach@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencoock <NPencoock@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: Common Cause v. Lewis -- notice of subpoena compliance

Counsel:

Pursuant to N.C. R. Civ. P. 45, I write to give notice that we recently received materials in compliance with our February 13 subpoena to Stephanie Hofeller Lizon.

Regards,
Stanton

R. Stanton Jones
Arnold & Porter
601 Massachusetts Ave., NW | Washington | DC 20001-3743
T: +1 202.942.5563 | F: +1 202.942.5999
stanton.jones@arnoldporter.com | www.arnoldporter.com

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EXHIBIT F

From: Jones, Stanton
Sent: Thursday, April 18, 2019 4:53 PM
To: Strach, Phillip J.; John Branch; Cox, Paul
Cc: Brennan, Stephanie; McKnight, Michael D.; Majmundar, Amar; zzz.External.AKhanna@perkinscoie.com; Braden, E. Mark; Nate Pencook; Riggins, Alyssa; Stanley, Trevor M.; Raile, Richard; melias@perkinscoie.com; Hill, Linda; Theodore, Elisabeth; Jacobson, Daniel; Speas, Edwin M.; Mackie, Caroline P.; Christine McCaffrey
Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Phil, John, and Paul:

I'm writing to follow up on our earlier email exchange regarding the materials we received in response to our subpoena to Stephanie Hofeller. As you know, our motion for clarification regarding potential filtering of personal sensitive information is pending with the Court. In the meantime, we want to again give you the opportunity to receive the materials that we do not propose to filter, as there is no dispute regarding those materials.

Here is what we propose: We will have Stroz go ahead and filter the personal sensitive materials as proposed in our motion for clarification, namely by removing the 1,001 files identified in the spreadsheet I previously sent you. Then, either (1) Stroz can make and mail you a copy of the post-filtering materials, or (2) you can send someone to Stroz's office in DC to create your own copy onsite there. If you prefer the former (i.e., having Stroz create and mail you a copy, and the Court later approves the proposed filtering process, you will pay the cost only of creating the copy and mailing it to you (for which we previously sent you an estimate), not any cost associated with the filtering itself. If the Court later disapproves the proposed filtering process, you will not be responsible for any costs associated with this interim process.

Let us know how you'd like to proceed.

Stanton

Stanton Jones

Partner

Arnold & Porter

601 Massachusetts Ave., NW

Washington | District of Columbia 20001-3743

T: +1 202.942.5563

Stanton.Jones@arnoldporter.com | www.arnoldporter.com

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>

Sent: Friday, April 12, 2019 11:50 AM

To: Strach, Phillip J. <phil.strach@ogletree.com>; John Branch <JBranch@shanahanlawgroup.com>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Cox, Paul <pcox@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; melias@perkinscoie.com; Hill, Linda <LHill@poynerspruill.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Speas, Edwin M. <ESpeas@poynerspruill.com>; Mackie, Caroline P.

<CMackie@poynerspruill.com>; Christine McCaffrey <CMcCaffrey@shanahanlawgroup.com>

Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Phil:

These are the search terms we used to generate the list of file names and file paths we sent you yesterday:

Lizon!
Tax!
(401-K)!
Steph!
Kath!
Medic!
Prescription!
Doctor!
Surgery!
Glucose!
Cancer!
Blood!
Trust!
W-9!
Guardian!
Patient!
Hospital!
Mojko!
Mojmir!
HIPA!
Police!
Vaccination!
Wife!
Parent!
Passport!
Bank!
Daughter!
Investment!

Following your latest e-mail below, we have added the terms "IRA," "IRS," variations of "401-k" based on removing the hyphen and making the k capitalized or not, and "Hartsbough." This search produced 32 additional files that we propose to filter out. Attached is an updated spreadsheet with the complete list of files we propose to filter, with the 32 new ones added at the end. If you have other terms indicative of sensitive personal information that you think we should search, please let us know. As we've said previously, our only objective here is to remove sensitive personal information so that no one sees it, including us. And we realize that the keyword search process may be underinclusive, which is why we would designate any sensitive personal information that is not picked up by the keyword searches as Highly Confidential under the Consent Protective Order.

Beyond that, your characterization that the external electronic media included files that are "nonresponsive" to the subpoena, including about Dr. Hofeller's work in other states, is irrelevant and wrong. As Intervenor Defendants noted yesterday in their brief, all of the external electronic media we received are responsive to our subpoena, which requested "storage devices" containing relevant ESI. Neither the subpoena recipient nor any party lodged any objection to any aspect of the subpoena.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Friday, April 12, 2019 10:55 AM
To: Jacobson, Daniel; Jones, Stanton; John Branch
Cc: Brennan, Stephanie; McKnight, Michael D.; Majmundar, Amar; zzz.External.AKhanna@perkinscoie.com; Braden, E. Mark; Nate Pencook; Cox, Paul; Riggins, Alyssa; Stanley, Trevor M.; Raile, Richard; melias@perkinscoie.com; Hill, Linda; Theodore, Elisabeth; Speas, Edwin M.; Mackie, Caroline P.; Christine McCaffrey
Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Dan:

We are not sure how the filtering was done but it appears to have removed only 1.2% of the documents from the index, a far lower amount of personal files than Plaintiffs have led us to believe exist in the data Ms. Lizon produced. Personal information clearly remains on the index. For instance, the very last line in the Index is a document called “\$loans to Chris Hartsough” and it is not marked on the files to filter. However, other pictures/documents involving Chris Hartsough were filtered out. We did another quick search for terms that would include sensitive information like “401k” or “IRA” and came up with many documents not included in the filtered list. Just two examples are document 23269 (“401K Deposit Wire 3-31-2014”) and 23262 (“SEP IRA plus 401k RMD Worksheet”). This does not even begin to cover the many files on the index that are clearly nonresponsive to Plaintiffs’ subpoena, such as files dealing with issues in other states. A filtering approach is clearly not going to be sufficient to remove personal and nonresponsive files to protect Dr. Hofeller’s privacy, which is why we have proposed approaches that are designed to ensure all such files are removed and returned or destroyed.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Sent: Thursday, April 11, 2019 10:01 PM
To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <Phil.Strach@ogletreedekins.com>; John Branch <JBranch@shanahanlawgroup.com>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; AKhanna@perkinscoie.com; Braden, E. Mark <MBraden@bakerlaw.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Cox, Paul <pcox@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; melias@perkinscoie.com; Hill, Linda <LHill@poynerspruill.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Speas, Edwin M. <ESpeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>
Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Phil and John,

Following up on Stanton’s email below, to make things as easy as possible, we went ahead and created the list of file names / file paths that our vendor would filter out. That list is attached (Plaintiffs designate this list as Highly Confidential pursuant to the protective order). Please let us know by 12PM tomorrow (Friday) if you agree to our proposal below, based on the attached list of files names / paths.

Best,
Dan

Daniel Jacobson
Senior Associate

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601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5602
Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>

Sent: Thursday, April 11, 2019 6:13 PM

To: Strach, Phillip J. <phil.strach@ogletree.com>; John Branch <JBranch@shanahanlawgroup.com>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Cox, Paul <pcox@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; melias@perkinscoie.com; Hill, Linda <LHill@poynerspruill.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Speas, Edwin M. <ESpeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>

Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Phil and John:

I'm taking off Ms. Myers and Mr. Steele. Per the third approach to the sensitive subpoena materials proposed by Legislative Defendants, would Legislative Defendants and Intervenor Defendants agree to the following procedures: We will send you a list of all the file names and file paths we propose to filter out on the basis of confidentiality concerns, along with a list of the search terms used to generate that list. If you believe any of the files on the list should not be filtered and should instead be provided to you, you can tell us and we can confer and seek the court's intervention only as needed with respect to specific documents. We doubt there will be any disagreement given the nature of the file names and file paths that will be filtered, e.g., documents named "tax return" or "medications."

If you both agree to this approach, we will create and send you the list and the search terms, and we can all jointly advise the Court that we've resolved this dispute consensually.

Please let us know by 12pm ET tomorrow whether you agree.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]

Sent: Thursday, April 11, 2019 5:17 PM

To: Nate Pencook; Cox, Paul; Riggins, Alyssa; Jacobson, Daniel; Mackie, Caroline P.; Stanley, Trevor M.; Myers, Kellie Z.; Steele, Adam H.

Cc: Jones, Stanton; Theodore, Elisabeth; Brennan, Stephanie; McKnight, Michael D.; Majmundar, Amar; Speas, Edwin M.; zzz.External.AKhanna@perkinscoie.com; Braden, E. Mark; Raile, Richard; melias@perkinscoie.com; Hill, Linda; John Branch

Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Ms. Myers and Mr. Steele:

Attached is Legislative Defendants' Response to Plaintiffs' Motion for Clarification.

EXHIBIT G

NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COMMON CAUSE, et al.,)
Plaintiffs,)
v.) WAKE COUNTY
REPRESENTATIVE DAVID R. LEWIS,) 18 CVS 014001
IN HIS OFFICIAL CAPACITY AS)
SENIOR CHAIRMAN OF THE HOUSE)
SELECT COMMITTEE ON)
REDISTRICTING, et al.,)
Defendants.)

TRANSCRIPT, Volume I of I
Tuesday, April 30, 2019

April 30, 2019 Session
The Honorable Paul Ridgeway, The Honorable Joseph
Crosswhite, and The Honorable Alma Hinton, Judges Presiding

APPEARANCES:

R. Stanton Jones, Esq.
Elisabeth Theodore, Esq.
Dan Jacobson, Esq.
Eddie Speas, Esq.
Caroline Mackie, Esq.
On behalf of the Plaintiffs

Phillip Strach, Esq.
On behalf of the Legislative Defendants

Paul Cox, Esq.
Stephanie Brennan, Esq.
On behalf of the Legislative Defendants

John Branch, Esq.
Nathan Pencook, Esq.
On behalf of the Defendant-Intervenors

Brad Worley
Worley Reporting
P.O. Box 99169
Raleigh, NC 27624

1 (Proceedings begun at 1:02 p.m.)

2 THE BAILIFF: Oyez, oyez, oyez, this Honorable
3 Superior Court for the State of North Carolina, County of
4 Wake, is now convened and setting -- and sitting for this
5 special setting. The Honorable Judge Joseph N. Crosswhite
6 presiding, the Honorable Alma L. Hinton presiding, and the
7 Honorable Judge Paul C. Ridgeway, present and presiding.
8 God save this State and this Honorable Court. Please be
9 seated and remain quiet. Good afternoon, Your Honor.

10 JUDGE RIDGEWAY: Good afternoon. All right. All
11 right. Well, we are -- Judge Hinton, are you on the line?

12 JUDGE HINTON: I am.

13 JUDGE RIDGEWAY: Very good. I believe we are
14 waiting on Judge Crosswhite, unless he just joined us.
15 Judge Crosswhite, are you on the line? All right. Then
16 we'll simply be at ease until we hear from Judge Crosswhite.

17 (Pause.)

18 He should be with us momentarily. He was waiting
19 for our call. So we are -- he should be dialing in.

20 JUDGE CROSSWHITE: Judge Ridgeway, you there?

21 JUDGE RIDGEWAY: Yes. Are you there, Judge
22 Crosswhite?

23 JUDGE CROSSWHITE: Yes, I am.

24 JUDGE RIDGEWAY: Okay. Very good. So we have the
25 panel. This is in the matter of Wake County, File Number 18

1 CVS 14001, Common Cause, et al., versus Representative David
2 Lewis, et al.

3 This is a three-judge panel assigned by the Chief
4 Justice of North Carolina relating to redistricting
5 challenges in North Carolina. And on the line, we have the
6 Honorable Judge Hinton and Judge Crosswhite, and I'm Paul
7 Ridgeway.

8 Why don't we begin with identification of counsel
9 and others who may be on line? So starting with the
10 Plaintiff, could the Plaintiff tell us who you have with us
11 today?

12 MR. JONES: Yes, Your Honors, this is Stanton
13 Jones from Arnold & Porter for the Plaintiff. I'm joined by
14 my colleagues from Arnold & Porter, Elisabeth Theodore and
15 Dan Jacobson. And also on the line are Eddie Speas and
16 Caroline Mackie from Poyner SpruiII.

17 JUDGE RIDGEWAY: All right. Thank you, Mr. Jones.
18 So for the -- let's start with the Legislative Defendants.
19 Who do we have with respect to the Legislative Defendants?

20 MR. STRACH: Good afternoon, Your Honor. This is
21 Phil Strach at Ogletree Deakins for the Legislative
22 Defendants.

23 JUDGE RIDGEWAY: All right. How about the State
24 Defendants?

25 MR. COX: Your Honor, this is Paul Cox and

1 Stephanie Brennan with the North Carolina Department of
2 Justice on behalf of the State Defendants.

3 JUDGE RIDGEWAY: All right. And on behalf of
4 Intervenors?

5 MR. BRANCH: Good afternoon, Judge. This is John
6 Branch and Nathan Pencook of Shanahan Law Group on behalf of
7 the Intervenors.

8 JUDGE RIDGEWAY: All right. Very good. Anybody
9 else on line that we haven't covered in that roster? All
10 right. Very good.

11 We're in open court here in Wake County. We have
12 several folks in the gallery as well as judicial fellows
13 that are assisting in this matter as the clerk, the court
14 bailiff in this courtroom. So we're ready to proceed.

15 The hearing today was noticed to consider three
16 matters. The noticed matters are the Plaintiffs' Motion for
17 Clarification Pursuant to Rule 45, the Plaintiffs'
18 Supplemental Brief Regarding Plaintiffs' First and Second
19 Motions to Compel that was filed April 12th, and then we
20 have the Legislative Defendants' Motion to Amend the Case
21 Management Order. That motion was filed April 22nd relating
22 to extension of the date for Defendants' expert reports.

23 Why don't we start with the Motion for
24 Clarification Pursuant to Rule 45, and I'll be glad to hear
25 from the Plaintiffs -- we'll be glad to hear from the

1 Plaintiffs first with respect to that matter.

2 MR. JONES: Thank you, Your Honor. This is
3 Stanton Jones for the Plaintiffs. So in this motion, we
4 seek the Court's guidance on how to comply with Rule
5 45(c)(1) when the material that we received in response to a
6 third-party subpoena appears to contain some personal
7 sensitive information.

8 And just as quick background, after this case was
9 filed, the Plaintiffs were contacted by Stephanie Hofeller
10 who advised that she wanted to give us materials -- the
11 materials relating to her late father's redistricting work.

12 And so to be sure that all parties in the case
13 would receive notice and an opportunity to object, we sent
14 Ms. Hofeller a formal subpoena on February 13th, and we sent
15 a copy of that subpoena to all of the Defendants and counsel
16 on the same day. The subpoena sought all documents relating
17 to the 2017 and 2011 State legislative plans in North
18 Carolina, all of which were drawn by Dr. Hofeller, as well
19 as any electronic storage devices that may contain any such
20 information. And neither Ms. Hofeller nor any parties in
21 this case moved to quash the subpoena or otherwise lodged
22 any objection to this subpoena.

23 So on March 13th, we received Ms. Hofeller's
24 subpoena response. It consisted of four hard drives and 18
25 thumb drives, all of which were responsive to the subpoena.

1 Pursuant to the Rule, we kindly notified all of the parties
2 of the subpoena response on March 20th.

3 And then based on a partial index of about 75,000
4 documents, file names and file tags that was created by our
5 computer forensics vendor, [inaudible], it became clear to
6 us that a small percentage of these files on these
7 electronic storage devices, based on their names -- the file
8 names, they appear to contain medical, tax and other family
9 personal sensitive information.

10 And so after consulting with our firm's ethics
11 committee expert on medical privacy, we proposed to all of
12 the parties in the case that we use, or that our vendor,
13 rather, use search terms, keyword searches, to filter out
14 files that have names indicative of personal sensitive
15 information. And then consistent with Rule 45(c)(1), we
16 would share the remaining files with all of the other
17 parties.

18 So to facilitate this, on April 9th, we sent all
19 parties the index that we had from our vendor of the 75,000
20 files. And to be totally transparent about what we were
21 proposing, we then sent all parties a list of the specific
22 files -- specific file names that we proposed to filter out
23 based on these on personal sensitive information as well as
24 the search terms that we used to identify those files. It's
25 1,001 files that, based on the file names and the keyword

1 searches we used, appeared to be personal and sensitive in
2 nature and had nothing to do with redistricting.

3 So the State Defendant consented to this approach,
4 but Legislative Defendant and Intervenor objected. As I
5 understand it, they do not dispute that all of the 1,001
6 files at issue, in fact, do appear to contain personal
7 sensitive information that's totally unrelated to
8 redistricting. But they nonetheless object to any filtering
9 or they have objected to any filtering and insisted that we
10 send them all of the files on the -- on the storage devices,
11 including the personal sensitive information.

12 Most recently, Your Honors, on April 18th, we
13 offered to immediately send Legislative Defendants and
14 Intervenor the roughly 74,000 files that everyone agrees
15 will be shared with all parties at no expense to them until
16 there's a resolution of this dispute over the 1,001 personal
17 sensitive files. They never responded to that offer.

18 And I'll note briefly, in our brief, we said that
19 we had made that offer on April 28th. That was, of course,
20 a typo. The brief is from before April 28th. We definitely
21 made that offer on April 8, almost two weeks ago.

22 So we believe that the process we have proposed to
23 filter out obviously personal sensitive information in a
24 completely transparent way, is reasonable and appropriate in
25 these circumstances. And so in the first instance, we ask

1 that the Court order that we, the Plaintiffs, may implement
2 the proposed filtering process to filter out the 1,001
3 personal sensitive files and share or provide the remaining
4 files to all of the other parties.

5 Alternatively, the Court can order that -- that
6 all of the files be shared, including the ones with file
7 names indicating personal sensitive information, and we
8 will, of course, comply with -- with this Court -- Court's
9 direction. We're simply not able to provide those files
10 without a court order based on the personal sensitive
11 privacy concerns.

12 In their response to the motion, Legislative
13 Defendants suggested some other different approaches, but
14 they -- their proposals are not centered around personal
15 privacy concerns, but instead raised issues like relevance
16 or responsiveness. So to be clear, the storage devices we
17 received are responsive to the subpoena in their entirety.
18 Even the Intervenor, in their brief, acknowledged that
19 these storage devices in their entirety were responsive to
20 the subpoena. And now what we need to do is get guidance on
21 the best approach to 1,001 personal sensitive files. And in
22 any event, the time to raise any objections as the scope or
23 breadth of the subpoena passed months ago.

24 So yes, to sum up, we would ask the Court to order
25 either one of two things. In the first instance, we believe

1 that the most appropriate and reasonable approach here is to
2 order that we implement our proposed filtering process, or
3 alternatively, to order that we share the entirety of the
4 subpoena responses to all parties without any filtering.

5 JUDGE RIDGEWAY: All right. Okay. Thank you.
6 Mr. Strach?

7 MR. STRACH: Yes, Your Honor. Thank you. Phil
8 Strach with Ogletree Deakins.

9 Your Honor, we've been -- all along, we've simply
10 been asking the Plaintiffs to comply with what we think is
11 very plain language of the rules, which is to allow us to
12 inspect and copy all the materials they received from Dr.
13 Hofeller's daughter. And if they need a court order to do
14 that, we'd be certainly fine with that. And I think, even
15 they stated in their reply brief that if the Court orders
16 that, they will do that. I think that's appropriate.

17 However, in light of the filing the Plaintiff made
18 on Friday evening, where they disclosed some of the files
19 that they have received, we have a concern that there's not
20 just personal information in these 76,000 files, that there
21 are likely privileged -- attorney-client privileged work
22 product, and expert witness privileged materials that are in
23 these files, and that the Plaintiffs, frankly, should not be
24 reviewing or even looking at it.

25 And we don't know how Dr. Hofeller's daughter came

1 into possession of these files. We do not know if she came
2 into possession of them legally, but that's not been
3 explained at any point in the process.

4 And so we -- we think, at this point, given the
5 nature of the files, that the proper course of action to
6 begin with is for the Plaintiffs to return all of the
7 original devices to Dr. Hofeller's estate. Dr. Hofeller's
8 estate has been cut out of this process, and it would seem
9 to us to be the most appropriate, reasonable approach, would
10 be to allow the estate to protect Dr. Hofeller's interests
11 in these -- in these files.

12 But barring that, we think it's appropriate for
13 the Court to order the Plaintiffs to provide all files to us
14 so that we can conduct appropriate review, because I'd note,
15 Your Honors, that these files don't contain information just
16 pertaining to North Carolina. They -- they appear to
17 contain files pertaining to redistricting in many other
18 states. Many of those files are likely also privileged.
19 And so there needs to be a robust effort by someone to go
20 through the files and make sure that the privileged
21 documents are removed before the Plaintiffs are able to --
22 to -- to go through them.

23 So we are -- we are concerned. We are certainly
24 capable, just as capable as the Plaintiffs of protecting
25 confidential information. We also represented Dr. Hofeller

1 for many years as an expert witness, so we are also capable
2 of culling through and removing privileged files. So we
3 think, number one, the materials should go to the estate.
4 Barring that, we would ask the Court to order the Plaintiffs
5 to provide us with all the original, unfiltered files.

6 JUDGE RIDGEWAY: Okay. All right. Mr. Branch, on
7 behalf of the Intervenors? Or did somebody else --

8 MR. BRANCH: A couple of points here, in response
9 to a couple of points. The representation that Mr. Jones
10 made to the Court, I do not believe that there is an
11 agreement that the documents that the Plaintiff's counsel
12 sent a spreadsheet listing their file names are all actually
13 confidential and non-relevant documents. There are a number
14 of file names in there that at least piqued my interest as
15 far as whether or not it contains relevant data. But I do
16 not believe that there has been any actual searchings of
17 those documents done. What the Plaintiffs had their vendors
18 do was run a number of search terms on the file.

19 So there's less clarity with regards to what these
20 documents are than I think that has been argued to the
21 Court. We've -- Judge, we've just taken a position since
22 April 3, all we want is a copy of what they got, and I think
23 that's -- that's provided for under Rule 45(D)(1), that they
24 shall. I do not believe there is a discretion built into
25 the rule itself.

1 And finally, with regard to Mr. Jones' statement
2 that, you know, objections with regard to the scope of
3 subpoena are untimely, the Court's got the ability -- what
4 -- if the Court orders that copies of the documents turned
5 over pursuant to the subpoena are to be provided to the
6 Defendants, the Court has the ability on the back end, to
7 entertain protective orders in regards to what the parties
8 can do with that information.

9 And so this -- we're not taking the position that
10 just because we get a copy of the document, we can do
11 anything with any of the documents there. There's a process
12 under the rule for that, or for protecting that information,
13 but at this point, we ask that an order that the materials
14 go back to the estate, if, frankly, we don't have any
15 information with regard to whether or not [inaudible] has
16 those documents, but we just think that the documents should
17 either -- copies of whatever it was the Plaintiffs received
18 pursuant to the subpoena, should be provided to everyone
19 else involved.

20 JUDGE RIDGEWAY: So, for example, I know there's
21 already a consent protective order in place that has a
22 designation of highly confidential, attorney's eyes only.
23 So do you think that it would be appropriate for the Court
24 to -- if it did provide those 1,001 files that have already
25 been identified as potentially containing sensitive personal

1 information, can it cover those 1,001 files by the blanket
2 of the highly confidential designation? Mr. Branch?

3 MR. BRANCH: I believe so, Judge, I mean,
4 contingent on an opportunity for us to flag any specific
5 documents that we may have issue with for reconsideration by
6 the Court. I don't have an objection to that.

7 JUDGE RIDGEWAY: Right. Okay. All right. Okay.
8 Thank you, Mr. Branch. And then for the State, any position
9 that you wish to be heard on, Mr. Cox or Ms. Brennan?

10 MR. COX: Yes, Your Honor. Just briefly, we did
11 request a copy of the subpoena response under the rule. We
12 appreciate the fact that the Plaintiff's alerted us all that
13 there were very personal, medical, and that sort of
14 documents included in the subpoena response. We've made it
15 clear from the get-go that we really don't have an interest
16 in obtaining or retaining any sort of personal, particularly
17 medically sensitive information. So we've been okay with
18 the plan that the Plaintiff proposes in filtering the
19 documents in the lists they provided. But of course, we
20 would be happy to comply with whatever the Court orders in
21 regard to how these documents secured.

22 JUDGE RIDGEWAY: Let me just ask logistically, of
23 the Plaintiffs, when you're talking about sharing files,
24 would this be a shared drive? Or are you talking about
25 actually physically sending a thumb drive, a hard drive?

1 What is the, the mechanism for sharing this large volume of
2 files?

3 MR. JONES: Certainly, Your Honor. There are,
4 there are two possibilities that the parties have discussed.
5 We had originally proposed to have our vendor create a -- a
6 physical hard drive that we would provide copies to each of
7 the other sets of defendants. In response, I believe the
8 Legislative Defendants and possibly the Intervenors as well,
9 had suggested an alternative which is that they would want
10 to have their own computer forensic vendor come to our
11 vendor's office here in D.C. and actually physically fax and
12 potentially copy the materials themselves. But what we have
13 proposed was to them -- was to, to create a physical copy of
14 our physical hard drive and sharing.

15 JUDGE RIDGEWAY: Okay.

16 MR. JONES: It's too large -- the volume is too
17 large to share it in another way.

18 JUDGE RIDGEWAY: All right. And, Mr. Strach, is
19 that your current plan to send your vendor to the
20 Plaintiff's vendors? Is that your current intention?

21 MR. STRACH: Your Honor, we probably could do it
22 either way. I'm -- I'm sure we'll -- depending on what the
23 Court orders, would be the logistics of them making a copy
24 or us getting a copy, I'm sure that it can be worked out.
25 But, but I agree with the Plaintiffs that ultimately it will

1 consist of a physical hard drive that we will obtain.

2 JUDGE RIDGEWAY: Okay. All right. Just curious.
3 Okay. Judges Hinton and Crosswhite, do you have any
4 questions relating to this particular topic?

5 JUDGE HINTON: I do have one question, and that is
6 with regards to the 4/18 offer of sending the un-objected-to
7 data and the lack of response to that in light of our
8 looming trial date. Would anybody like to offer any
9 explanation as to why they didn't go ahead and get which is
10 what -- was un-objected to?

11 MR. STRACH: Your Honor, sure, I'm Phil Strach, on
12 behalf of the Respondent. Your Honor, we've taken the
13 position that we should get all of it, which is what the
14 rule requires. We do not know if the search firms ended up
15 being over-inclusive or under-inclusive. And when we would
16 like to be able to search all of the original files as the
17 -- as they were provided to the -- the Plaintiffs, we can't
18 search it that way, so we have filtered out files.

19 JUDGE HINTON: So you didn't want to get the
20 75,000 pieces of information until you had the whole 76,000?

21 MR. STRACH: Yes, Your Honor, we believe we're
22 entitled to the 76,000. We think the rule is very clear,
23 and we would like to be able to obtain all of them and
24 search all of them at the same time.

25 JUDGE HINTON: All right.

1 JUDGE CROSSWHITE: I have one question, too, if
2 you don't mind. This is something, I guess related to what
3 Mr. Strach said early on, about not knowing how these files
4 even got delivered. I think he said it came from his
5 daughter. And -- and was she acting, as far as you know, as
6 the administrator for the estate, or was she somehow
7 employed by him and released it in that capacity? We
8 know -- do we know how she -- how she got them? Did she get
9 everything? Did she just kind of give him what she thinks
10 is out there, or what do you know about that?

11 MR. JONES: Your Honor, this is Dan Jones for the
12 Plaintiff. So a couple of points. We did previously
13 subpoena the estate for records and Dr. Hofeller's
14 possession of the estate, similar types of information that
15 we were seeking. They said that they didn't have responsive
16 materials. Ms. Hofeller, Dr. Hofeller's daughter, as I said
17 earlier contacted us, to say that she had these -- these
18 materials and wanted to make them available. And she also
19 explained to us that her desire to make these materials
20 available was also shared by her mother, who is Dr.
21 Hofeller's widow.

22 JUDGE CROSSWHITE: Okay. All right. Okay. Thank
23 you.

24 MR. STRACH: Your Honor, may I address that
25 briefly?

1 JUDGE RIDGEWAY: Yes.

2 MR. STRACH: So, a couple things on that. Dr.
3 Hofeller was estranged from his daughter. So if -- we have
4 a very serious concern about how she came into possession of
5 those files. And we are also, we also understand that Dr.
6 Hofeller's wife is essentially institutionalized and there
7 is some litigation over her competency. And so there are
8 some very serious questions to be answered, to Judge
9 Crosswhite's question about how Ms. Hofeller came into
10 possession of these files, which contain Dr. Hofeller's
11 privileged work on many, many states for years and years.
12 So we -- that is why we think that the information should go
13 to the estate so that the estate can protect its interest.

14 JUDGE CROSSWHITE: That's fine. Okay. Thank you.

15 MR. JONES: Your -- Your Honor, just briefly, this
16 is Mr. Jones, if I could just respond to a couple of things
17 there, because I do have additional information further to
18 what Mr. Strach said. So first of all, I think it is
19 entirely speculative for anyone to suggest that there's
20 anything improper about Mr. Hofeller's daughter possessing
21 these materials. I just -- I don't think that there's any
22 reason to make that suggestion now.

23 To the extent anyone has any concerns about that,
24 I think the time to raise it was months ago, either when we
25 served the subpoena on February 13th or on March 20th, when

1 we notified all parties that we had received four hard
2 drives and 18 thumb drives in response to the subpoena, not
3 in a filing yesterday or on this, or during this hearing
4 today. I think it's far too late to be raising those
5 concerns.

6 The other thing is that we are familiar that there
7 was a proceeding that was instituted with respect to Dr. --
8 the competency of Dr. Hofeller's widow, and our
9 understanding is that she was specifically not declared
10 incompetent. So, because Mr. Strach raised that, I just
11 wanted to point out that is our understanding. We made
12 every attempt to be sensitive to these issues and
13 responsible in our treatment of all of these materials.

14 JUDGE CROSSWHITE: Okay. Fine.

15 JUDGE RIDGEWAY: All right. Very good. Let's
16 turn to the second item on our list of motions, which is the
17 Plaintiff's Supplemental Brief, which is essentially a
18 motion to compel and for sanctions. Supplemental Brief
19 Regarding the Plaintiff's 1st and 2nd Motion to Compel
20 relating to discovery responses that have been received
21 since our last order on this topic. So we'll go ahead and
22 start with Mr. Jones on behalf of the Plaintiff.

23 MR. JONES: Thank you, Your Honor. So just
24 briefly to set the stage, this Supplemental Motion Brief
25 relates to discovery requests that we served our Legislative

EXHIBIT H

From: Strach, Phillip J. <phil.strach@ogletree.com>
Sent: Thursday, May 2, 2019 2:45 PM
To: Jones, Stanton; Jacobson, Daniel; McKnight, Michael D.; Raile, Richard; Braden, E. Mark; Stanley, Trevor M.; Riggins, Alyssa; Brennan, Stephanie; Majmundar, Amar; Cox, Paul; joshua.lawson@ncsbe.gov; John Branch; NPencook@shanahanmcdougal.com; Christine McCaffrey
Cc: Eddie Speas; Mackie, Caroline P.; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Gersch, David P.; Theodore, Elisabeth
Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

External E-mail

Stanton:

Please ship the forensic images to Setec Investigations at the address below. We would appreciate the courtesy of sending us a tracking number so that we may provide our team with notice of arrival. Additionally, please confirm that you will comply with standard e-discovery protocol and do the following:

1. Include with the drive shipment chain of custody forms, including chain of custody forms for each of the media drives received from Ms. Hofeller/Lizon;
2. Provide us with descriptions, names and photos of all original media drives;
3. Provide us with the excel version of the PDF "index" previously produced to us with columns indicating the file size, and file extension. We also request that you clarify whether the document path shown on the current PDF index reflect the original document path, or the original document path combined with the document path in the vendor's system.

Setec Investigations

Attention: Todd Stefan
145 S Fairfax Ave., Suite 200
Los Angeles, CA 90036
323-939-5598

Thanks.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Strach, Phillip J.
Sent: Thursday, May 02, 2019 1:37 PM
To: 'Jones, Stanton' <Stanton.Jones@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch

<JBranch@shanahanlawgroup.com>; NPencook@shanahanmcdougal.com; Christine McCaffrey
<CMcCaffrey@shanahanlawgroup.com>

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>;
melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Gersch, David P.
<David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Stanton: we would like you to ship the materials for Legislative Defendants directly to our vendor. I will provide the shipping information as soon as possible this afternoon. Thanks. Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>

Sent: Wednesday, May 01, 2019 6:35 PM

To: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Strach, Phillip J. <Phil.Strach@ogletreedekins.com>;
McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E.
Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa
<Alyssa.Riggins@ogletreedekins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar
<amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch
<JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com)
<DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>;
melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Gersch, David P.
<David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Also per Stroz Friedberg, and in furtherance of our compliance with the Court's order, it takes a long time to copy 2 terabytes of data, three times over (one copy per defendant group). So if any defendant group wants copies made and sent to you this week, Stroz needs to start the copying at 9am sharp tomorrow (Thursday). Alternatively, as I noted below, arrangements can be made for you or someone on your behalf to visit Stroz's office in DC to inspect and copy the materials onsite this week. Please let us know promptly how you wish to proceed.

Regards,
Stanton

From: Jones, Stanton

Sent: Wednesday, May 1, 2019 5:39 PM

To: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>; McKnight,
Michael D. <Michael.McKnight@ogletreedekins.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E. Mark
<MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa
<Alyssa.Riggins@ogletreedekins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar
<amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch
<JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com)
<DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>;
melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>;
zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Gersch, David P.

<David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Per Stroz Friedberg, the cost to copy and send the materials is \$2,500 per copy + shipping cost (minimal FedEx fees). Hence, if all three sets of defendants each want a copy made and sent to them, the total cost would be \$7,500, split three ways, plus the FedEx fees. Please let us know how you want to proceed.

Regards,
Stanton

From: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>

Sent: Wednesday, May 1, 2019 5:34 PM

To: Strach, Phillip J. <phil.strach@ogletree.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Gersch, David P.

<David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Phil, we've been told that the total volume of data is roughly 2 Terabytes.

Best,
Dan

Daniel Jacobson
Senior Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5602
Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: Strach, Phillip J. <phil.strach@ogletree.com>

Sent: Wednesday, May 1, 2019 5:32 PM

To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Gersch, David P.

<David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

External E-mail

Stanton: in assessing this issue, it would also be helpful for us to know the total volume of the data/files. Thanks. Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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From: Jones, Stanton <Stanton.Jones@arnoldporter.com>

Sent: Wednesday, May 01, 2019 5:06 PM

To: McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>;

melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Gersch, David P.

<David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Counsel:

In light of the Court's order below on the motion for clarification, please let us know immediately how each set of defendants prefers for the Stephanie Hofeller subpoena response materials to be made available to you for inspection and copying -- namely, whether you will send someone to Stroz's office in DC to inspect and copy the materials yourself, or whether you instead want us to have a copy of the materials made and sent to you, at your expense (which we are inquiring about now). We are standing by awaiting direction from each set of defendants.

Regards,
Stanton

R. Stanton Jones

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Stanton.Jones@arnoldporter.com | www.arnoldporter.com

From: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Sent: Wednesday, May 1, 2019 4:57 PM

To: McKnight, Michael D. <michael.mcknight@ogletree.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar

<amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

External E-mail

Take two...

Please find attached the complete order of the three-judge panel in this action. I apologize for the missing page and blame our scanner for keeping page 9 on the first run through.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District – Wake County
PO Box 1916, Raleigh, NC 27602
O 919-792-4775

Justice for all
www.NCcourts.gov/WakeTCA



From: McKnight, Michael D. <michael.mcknight@ogletree.com>

Sent: Wednesday, May 01, 2019 4:46 PM

To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; david.gersch@arnoldporter.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Ms. Myers,

It appears that a page following page 8 of the attached order may be missing as there is no signature page from the judges as there usually is. It also appears that one or more numbered paragraphs containing the court's orders may be missing. Could you confirm whether this is the case and send the missing page?

Thanks,

Michael

Michael D. McKnight | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3159 | Fax: 919-783-9412
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From: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Sent: Wednesday, May 01, 2019 4:16 PM

To: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; david.gersch@arnoldporter.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Subject: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Good afternoon,

Please find attached, for service, the order of the three-judge panel following the April 30, 2019 hearing in this matter, in Wake County Civil Superior Court. The original order will be forwarded to the Clerk of Court for the court file.

Best,



Kellie Z. Myers
Trial Court Administrator
10th Judicial District – Wake County
PO Box 1916, Raleigh, NC 27602
O 919-792-4775

Justice for all
www.NCcourts.gov/WakeTCA



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immediately by telephone or by return e-mail and delete it from his or her computer.

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EXHIBIT I

From: Jacobson, Daniel
Sent: Thursday, May 2, 2019 6:48 PM
To: 'John Branch'; Strach, Phillip J.; Jones, Stanton; McKnight, Michael D.; Raile, Richard; Braden, E. Mark; Stanley, Trevor M.; Riggins, Alyssa; Brennan, Stephanie; Majmundar, Amar; Cox, Paul; joshua.lawson@ncsbe.gov; Nate Pencook; Christine McCaffrey
Cc: Eddie Speas; Mackie, Caroline P.; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Gersch, David P.; Theodore, Elisabeth
Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Phil, John, and Paul: Stroz Friedberg estimates that the copying process should be complete by around 4pm tomorrow. Assuming that's the case, they can FedEx the materials then – please let us know if they should mark the packages for Saturday delivery or Monday delivery. In the alternative, you could arrange to have somebody go to Stroz's office tomorrow afternoon and pick up your copy there.

Phil: in response to your specific questions:

1. Stroz does not turn over their chain of custody forms, which are proprietary. However, they will attest in what they provide you that they received the unopened FedEx package containing the media from Arnold & Porter on March 13, 2019, as we have previously indicated.
2. Stroz can include descriptions, names and photos of all original media drives, as you requested.
3. We will provide an excel version with the information you requested tomorrow. Please note that this partial index is Plaintiffs' work product that Plaintiffs are under no obligation to provide, and that we provided to you previously as a courtesy to facilitate our discussion of how to approach the personal sensitive information on the media. We will nonetheless provide you the excel version as a courtesy, but we do not intend to provide any further work product. On your clarification question, the document path shown on the current PDF index may contain Stroz's unique organization and ES number, but everything following the ES number and backslash is original file path.

John, Stroz can provide the information you requested, but we assume you are requesting that information for the deliverable drives, not the original media. Please let us know if it is otherwise.

We will also provide tracking numbers for each of the shipments.

Best,
Dan

Daniel Jacobson
Senior Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5602
Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: John Branch <JBranch@shanahanlawgroup.com>
Sent: Thursday, May 2, 2019 3:00 PM
To: Strach, Phillip J. <phil.strach@ogletree.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Jacobson, Daniel

<Daniel.Jacobson@arnoldporter.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; Nate Pencook <NPencook@shanahanlawgroup.com>; Christine McCaffrey <CMcCaffrey@shanahanlawgroup.com>
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

External E-mail

Stanton,

Please ship the drive to the following address. I will also need the FedEx or UPS tracking number.

Attn: Michael Turner
Virtacore Systems
21551 Beaumeade Circle
Ashburn, VA 20147

In addition, our vendor has informed me that it needs the following information regarding the drive **prior** to shipping:

Hard Drive Description:

Serial Number:

Passcode (if password protected):

Client Matter:

Data Size:

Thank you,

John Branch

John E. Branch III | Partner



SHANAHAN LAW GROUP, PLLC

128 E. Hargett Street | Third Floor
Raleigh, NC 27601

Phone: (919) 856-9494

Email: jbranch@shanahanlawgroup.com

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From: Strach, Phillip J. <phil.strach@ogletree.com>

Sent: Thursday, May 2, 2019 1:38 PM

To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Christine McCaffrey <CMcCaffrey@shanahanlawgroup.com>

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Stanton: we would like you to ship the materials for Legislative Defendants directly to our vendor. I will provide the shipping information as soon as possible this afternoon. Thanks. Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>

Sent: Wednesday, May 01, 2019 6:35 PM

To: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Also per Stroz Friedberg, and in furtherance of our compliance with the Court's order, it takes a long time to copy 2 terabytes of data, three times over (one copy per defendant group). So if any defendant group wants copies made and sent to you this week, Stroz needs to start the copying at 9am sharp tomorrow (Thursday). Alternatively, as I noted below, arrangements can be made for you or someone on your behalf to visit Stroz's office in DC to inspect and copy the materials onsite this week. Please let us know promptly how you wish to proceed.

Regards,

Stanton

From: Jones, Stanton

Sent: Wednesday, May 1, 2019 5:39 PM

To: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; meliass@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Per Stroz Friedberg, the cost to copy and send the materials is \$2,500 per copy + shipping cost (minimal FedEx fees). Hence, if all three sets of defendants each want a copy made and sent to them, the total cost would be \$7,500, split three ways, plus the FedEx fees. Please let us know how you want to proceed.

Regards,
Stanton

From: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>

Sent: Wednesday, May 1, 2019 5:34 PM

To: Strach, Phillip J. <phil.strach@ogletree.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; meliass@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Phil, we've been told that the total volume of data is roughly 2 Terabytes.

Best,
Dan

Daniel Jacobson
Senior Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5602
Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: Strach, Phillip J. <phil.strach@ogletree.com>
Sent: Wednesday, May 1, 2019 5:32 PM
To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (<DWorrell@shanahanmcdougal.com> <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

External E-mail

Stanton: in assessing this issue, it would also be helpful for us to know the total volume of the data/files. Thanks. Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Wednesday, May 01, 2019 5:06 PM
To: McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (<DWorrell@shanahanmcdougal.com> <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Counsel:

In light of the Court's order below on the motion for clarification, please let us know immediately how each set of defendants prefers for the Stephanie Hofeller subpoena response materials to be made available to you for inspection and copying -- namely, whether you will send someone to Stroz's office in DC to inspect and copy the materials yourself, or whether you instead want us to have a copy of the materials made and sent to you, at your expense (which we are inquiring about now). We are standing by awaiting direction from each set of defendants.

Regards,
Stanton

R. Stanton Jones

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5563
Stanton.Jones@arnoldporter.com | www.arnoldporter.com

From: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Sent: Wednesday, May 1, 2019 4:57 PM

To: McKnight, Michael D. <michael.mcknight@ogletree.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell <DWorrell@shanahanmcdougal.com> <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

External E-mail

Take two...

Please find attached the complete order of the three-judge panel in this action. I apologize for the missing page and blame our scanner for keeping page 9 on the first run through.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District – Wake County
PO Box 1916, Raleigh, NC 27602
O 919-792-4775

Justice for all
www.NCcourts.gov/WakeTCA



From: McKnight, Michael D. <michael.mcknight@ogletree.com>

Sent: Wednesday, May 01, 2019 4:46 PM

To: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; david.gersch@arnoldporter.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell <DWorrell@shanahanmcdougal.com> <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Subject: RE: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Ms. Myers,

It appears that a page following page 8 of the attached order may be missing as there is no signature page from the judges as there usually is. It also appears that one or more numbered paragraphs containing the court's orders may be missing. Could you confirm whether this is the case and send the missing page?

Thanks,

Michael

Michael D. McKnight | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3159 | Fax: 919-783-9412
michael.mcknight@ogletree.com | www.ogletree.com | [Bio](#)

From: Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>

Sent: Wednesday, May 01, 2019 4:16 PM

To: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; david.gersch@arnoldporter.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Raile, Richard <rRaile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; melias@perkinscoie.com; ABranch@perkinscoie.com; AKhanna@perkinscoie.com; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; joshua.lawson@ncsbe.gov; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell (DWorrell@shanahanmcdougal.com) <DWorrell@shanahanmcdougal.com>; NPencook@shanahanmcdougal.com

Subject: Order: Common Cause, et al. v. Lewis, et al. (Wake County 18 CVS 14001)

Good afternoon,

Please find attached, for service, the order of the three-judge panel following the April 30, 2019 hearing in this matter, in Wake County Civil Superior Court. The original order will be forwarded to the Clerk of Court for the court file.

Best,



Kellie Z. Myers
Trial Court Administrator
10th Judicial District – Wake County
PO Box 1916, Raleigh, NC 27602
O 919-792-4775

Justice for all
www.NCcourts.gov/WakeTCA



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EXHIBIT J

June 5, 2019

VIA E-MAIL

Phillip J. Strach
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 110
Raleigh, NC 27609
phillip.strach@ogletree.com

Re: *Common Cause v. Lewis*, 18 CVS 0140001 (Wake County Sup. Ct., N.C.)

Dear Mr. Strach:

On behalf of Plaintiffs in the above-captioned lawsuit, I write in response to your May 31, 2019 letter on behalf of Legislative Defendants in both this case and several other cases concerning certain electronic storage devices produced by Stephanie Hofeller to Plaintiffs in response to their February 13, 2019 subpoena to Ms. Hofeller (the “Hofeller files”). Your letter (1) purports to designate the entirety of the Hofeller files as “Highly Confidential/Outside Attorneys’ Eyes Only” pursuant to the Consent Protective Order in this case, (2) asserts that Plaintiffs’ counsel have “likely” reviewed “privileged materials” of Legislative Defendants contained on the devices at issue, (3) expresses concern about the manner in which Plaintiffs received the devices from Ms. Hofeller in response to their subpoena, (4) makes several specific demands, and (5) suggests, without specificity or elaboration, that Plaintiffs’ counsel have been “neglecting [their] professional responsibilities.”

Your letter is not only baseless in every respect, but also troubling in its own right. We are concerned that Legislative Defendants are attempting—unilaterally and without authorization—to designate evidence produced by a *third party* in discovery pursuant to a *lawful subpoena* as Highly Confidential under the Court’s Consent Protective Order, apparently in an effort to conceal their own wrongdoing. Such wrongdoing appears to include false statements made by Legislative Defendants to federal courts, the Superior Court in this case, and the people of North Carolina.

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I. Legislative Defendants Have No Authority to Unilaterally Designate the Hofeller Files as Highly Confidential Under the Consent Protective Order

Your letter purports to “designate the entirety of the materials produced by Ms. Hofeller as ‘Highly Confidential/Outside Attorneys’ Eyes Only’ pursuant to the Consent Protective Order in” this case. But the Consent Protective Order does not authorize Legislative Defendants to designate *any* of the Hofeller files as Highly Confidential, let alone *all* of them. Paragraph 1 of the Order states: “To fall within the scope of this Agreement, any such Confidential material shall be designated as ‘CONFIDENTIAL’ or ‘HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,’ *by the Party producing the material.*” 4/5/19 Consent Protective Order ¶ 1 (emphasis added). Paragraphs 2 and 3 confirm that only “[t]he producing Party may designate” materials as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” *Id.* ¶¶ 2, 3 (emphasis added). Specifically, “[t]he producing Party may designate as ‘CONFIDENTIAL’ any materials that it produces in the litigation” subject to meeting certain confidentiality criteria, *id.* ¶ 2, and “[t]he producing Party may designate as ‘HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY’ (a) any non-public personal information, or (b) any CONFIDENTIAL material that the producing party reasonably and in good faith believes” meets certain additional criteria. *Id.* ¶ 3; *see also id.* ¶ 13 (stating that the Order applies equally to “information produced by a non-Party”).

Thus, the Consent Protective Order does not authorize anyone other than the party or non-party “producing the material” to designate such material as either Confidential or Highly Confidential. Legislative Defendants are not “the producing Party” of the Hofeller files, but instead are a “receiving party” of those files. Ms. Hofeller produced the Hofeller files, and she did not designate any of them as Confidential or Highly Confidential. To the contrary, Ms. Hofeller has testified to her desire that her father’s political and redistricting work be made available to serve as “a snapshot in time” and a “repository for . . . historical value” to provide “insight into the process -- the literal process.” S. Hofeller Dep. at 42:10-43:16; 104:12-105:16.

Furthermore, Legislative Defendants’ stated justification for attempting to designate the Hofeller files as Highly Confidential is pretextual. Your letter asserts that, in addition to the 1,001 files designated Highly Confidential pursuant to the Court’s May 1, 2019 Order, the devices include additional files containing “confidential financial information.” But your letter does not identify any such files, nor have you even attempted to establish that the number of such files is more than a small fraction of the total Hofeller files. If you are genuinely concerned about the privacy of files containing “confidential financial information,” you should identify each such file, and Plaintiffs will consider joining in a motion asking the Court to designate such files as Confidential

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or Highly Confidential, as appropriate. But your invocation of some small, unidentified number of files containing unspecified “confidential financial information” as a basis to designate hundreds of thousands of other files as Highly Confidential is unreasonable. The pretextual nature of your purported concern for the Hofeller family’s privacy is further laid bare by the fact that you attempted to designate “the entirety” of the files as Highly Confidential just one day after several of the Hofeller files—which exposed misconduct by federal government officials—were submitted to a federal district court and the United States Supreme Court in a case of national public importance.

While Plaintiffs would consider, as stated, jointly moving the Court to designate as Confidential or Highly Confidential any specific additional files containing “confidential financial information” for which a confidentiality designation would be appropriate, Legislative Defendants’ attempt to unilaterally designate “the entirety” of the Hofeller files as Highly Confidential is not authorized under the Consent Protective Order and is therefore without legal effect.

II. Legislative Defendants’ Privilege Claims Are Meritless

A. Plaintiffs’ Counsel Have Acted Properly and Responsibly At All Times and Have Not Reviewed Any Conceivably Privileged Materials

Your letter asserts that Plaintiffs’ counsel have “apparently been reviewing likely privileged materials” of Legislative Defendants. That assertion is wrong on every level.

First, while your letter asserts that there are “many” privileged materials among the Hofeller files, your letter identifies only *five* specific documents that you say are “expert witness materials created by Dr. Hofeller in connection with North Carolina legal matters.” Plaintiffs’ counsel have no intention of reviewing any of those five documents. Nor have Plaintiffs’ counsel reviewed—or have any intention of reviewing—any other draft expert report or draft declaration prepared in connection with litigation.

Second, your letter asserts that Plaintiffs “actually filed some” “likely privileged” materials in their April 26, 2019 Supplemental Reply Brief. You do not identify which of the files included in Plaintiffs’ April 26 reply brief are supposedly “likely privileged,” and for good reason. Legislative Defendants’ own April 29, 2019 response to Plaintiffs’ reply brief precludes Legislative Defendants from claiming privilege over the files included in the reply—or, indeed, over any draft maps or analyses of draft maps in the Hofeller files that existed before July 1, 2017. In their April 29 response, Legislative Defendants asserted that they had no “knowledge” of Dr. Hofeller’s work creating draft maps and analyses of draft maps before July 1, 2017, and Legislative Defendants

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specifically denied that they “authorized or were aware of any of the maps or charts Plaintiffs highlighted.” Having taken these positions that they had no knowledge of and did not authorize the creation of the material by Dr. Hofeller, Legislative Defendants cannot now contend that the materials are privileged as to them. Moreover, if Legislative Defendants had authorized Dr. Hofeller to draft these maps, they should be public records under state law and responsive to Plaintiffs’ discovery requests in this case.

Additionally, in the more than one month since Plaintiffs’ April 26 reply, Legislative Defendants never sought a protective order as to any materials included in the reply or asked that the reply be placed under seal.

B. Legislative Defendants Have Waived Any Privilege Claim

In any event, Legislative Defendants have waived any privilege they may have held over *any* information on the Hofeller files, several times over.

1. Legislative Defendants’ Failure to Object to Plaintiffs’ Subpoena or Move to Quash Waived Any Privilege Claim

As you know, we sent Legislative Defendants’ counsel written notice of Plaintiffs’ subpoena to Ms. Hofeller on February 13, 2019, the same day we served the subpoena. The subpoena sought “[a]ny storage device in [Ms. Hofeller’s] possession, custody, or control that contains” either any documents relating to Dr. Hofeller’s work on the challenged state House and state Senate Plans or any information “related to” any such documents. Legislative Defendants could have filed protective objections or a motion to quash, but they did not do so. As the Court has acknowledged: “No objection to or motion to quash the subpoena was filed by any party to this action or Ms. Hofeller.” 5/1/19 Order at 1; *see also* S. Hofeller Dep. at 39:2-20.

Legislative Defendants’ failure to object to the subpoena or move to quash—even though the subpoena on its face sought materials related to Dr. Hofeller’s work for Legislative Defendants—constitutes a clear waiver of any privilege. A party “waive[s] its privilege by its own inaction” when it “fail[s] to act to protect any privilege when served with copies of [a third-party] subpoena.” *Am. Home Assur. Co. v. Fremont Indem. Co.*, 1993 WL 426984, at *3-4 (S.D.N.Y. Oct. 18, 1993). “Where a party is aware” that a subpoenaed third party may possess the party’s privileged information, “the burden falls on that party to take affirmative steps to prevent the disclosure in order [to] preserve the privilege as to itself.” *Id.* at *4. “The failure to act to prevent or object to the disclosure of confidential communications when a party knows or should know that privileged documents may be disclosed by another party waives the privilege with respect to the

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party failing to act.” *Id.*; see also *Ravenswood Inv. Co., L.P. v. Avalon Corr. Servs., Inc.*, 2010 WL 11443364, at *2 (W.D. Okla. May 18, 2010) (“Because Defendant did not state its claim of privilege within fourteen days of service of the subpoena on [a third party], the Court concludes Defendant has waived any such claim.”); *Patterson v. Chicago Ass’n for Retarded Children*, 1997 WL 323575, at *3 (N.D. Ill. June 6, 1997) (“By failing to object” to third-party subpoena, party “essentially waived her claim to privilege, and the information gleaned via the subpoena may be used.”); *Scott v. Kiker*, 59 N.C. App. 458, 461, 297 S.E.2d 142, 145 (1982) (“Defendant . . . waived his privilege because he failed to object to the testimony.”).

Here, “[t]he broad scope of that subpoena” to Ms. Hofeller “should reasonably have alerted” Legislative Defendants “to the possibility that [Ms. Hofeller] might produce the [allegedly] privileged documents.” *Am. Home Assur.*, 1993 WL 426984, at *4. Legislative Defendants’ “failure to take any steps to prevent the disclosure of [allegedly] privileged documents waived the privilege they seek to assert.” *Id.*

2. Legislative Defendants’ Successful Demand That Plaintiffs Transmit Complete Copies of All of the Hofeller Files to the Other Defendants Waived Any Privilege Claim

Legislative Defendants independently waived any privilege by demanding that Plaintiffs transmit complete copies of all of the Hofeller files to State Defendants and Intervenor Defendants. Following the Court’s April 30 hearing, Plaintiffs transmitted complete copies of the full contents of the storage devices—without filtering out *any* of the files—to Intervenor Defendants and State Defendants, neither of which holds any privileged relationship with Legislative Defendants. Legislative Defendants successfully requested that the Court order Plaintiffs to transmit complete copies of the devices to all Defendants even though weeks earlier, on April 9, 2019, Plaintiffs sent you a searchable index of file names and file paths that made apparent the devices contain files involving Dr. Hofeller’s work for Legislative Defendants in litigation and other contexts. Legislative Defendants could have requested protective measures before these files were provided to the State Defendants and Intervenor Defendants, but they did not.

Given that “the documents were revealed to third parties without objection”—at Legislative Defendants’ request, no less—Legislative Defendants have waived any claim of privilege over them. *Durham Indus. Inc. v. N. River Ins. Co.*, 1980 WL 112700, at *2 (S.D.N.Y. May 8, 1980); see also *Scott v. Glickman*, 199 F.R.D. 174, 179 (E.D.N.C. 2001) (finding waiver where no “reasonable protective measures were employed in order to safeguard claims of privilege” or “to ensure confidentiality” before documents were produced); *Parkway Gallery Furniture, Inc. v. Kittinger/Penn. House Grp., Inc.*, 116

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F.R.D. 46, 50 (M.D.N.C. 1987) (“the privilege may be lost even by inadvertent disclosure when a person fails to take affirmative action and institute reasonable precautions to ensure that confidentiality will be maintained”).

Not only did Legislative Defendants demand that Plaintiffs disseminate the Hofeller files to the other Defendants, Legislative Defendants did so knowing that State Defendants have not been aligned with them in this litigation. *In re Martin Marietta Corp.*, 856 F.2d 619, 625 (4th Cir. 1988) (finding waiver where party disclosed documents to government actors who were “adverse during the proceedings at issue”); *Navajo Nation v. Peabody Holding Co.*, 255 F.R.D. 37, 48 (D.D.C. 2009) (finding waiver where a party placed allegedly privileged materials “in the hands of” a potentially adverse party).

3. Any Work-Product Protection Is Defeated by Plaintiffs’ Substantial Need for Information and Inability to Obtain It Elsewhere

Any possible claim of work-product privilege over materials related to Dr. Hofeller’s work during the *Covington* remedial phase and/or in drawing the 2017 Plans is also defeated by Plaintiffs’ substantial need for the materials and the prejudice to Plaintiffs and the public interest that would ensue were they concealed.

“The work product doctrine” is “a qualified privilege for certain materials prepared by an attorney acting on behalf of his client in anticipation of litigation.” *State v. Hardy*, 293 N.C. 105, 126, 235 S.E.2d 828, 841-42 (1977). It does not protect materials if a party shows “a ‘substantial need’ for the document and ‘undue hardship’ in obtaining its substantial equivalent by other means.” *Evans v. United Servs. Auto. Ass’n*, 142 N.C. App. 18, 28, 541 S.E.2d 782, 789 (N.C. Ct. App. 2001) (quoting N.C. Gen. Stat. § 1A-1, Rule 26(b)(3)).

Even based on a limited review of non-privileged materials, it is clear that Plaintiffs have a substantial need for the Hofeller files related to Dr. Hofeller’s work during the *Covington* remedial phase and/or in drawing the 2017 Plans, and that Plaintiffs—and the public—would suffer an extreme hardship if they were concealed. The files reveal evidence of false statements and material omissions to the federal district court in *Covington*, which will be highly relevant to the merits of Plaintiffs’ claims as well as any remedial process.

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**a. Legislative Defendants Made False Statements to the
Covington Court to Avoid Special Elections in 2017**

The Hofeller files reveal that Legislative Defendants made false statements to the *Covington* district court about when the 2017 Plans were created. As a result of those false statements, the court did not order special elections in 2017 that would have jeopardized Republican super-majority control of the state House and state Senate.¹

As you know, following the U.S. Supreme Court’s decision in *Covington* on June 5, 2017, the *Covington* district court ordered briefing on whether to conduct special elections under remedial state House and state Senate plans in 2017 or instead wait until the 2018 elections to implement remedial plans. In a brief submitted to the *Covington* court on July 6, 2017, Legislative Defendants repeatedly stated that no work on remedial plans had yet begun, and that Legislative Defendants therefore needed a long period of time to draft new plans. For instance, Legislative Defendants told the court:

- The General Assembly had not “start[ed] the laborious process of redistricting earlier” than July 2017. *Covington*, ECF No. 161 at 28.
- It had not been “necessary to begin the process” of drawing new districts “until at, the earliest, the end of the current Supreme Court term” on June 30, 2017. *Id.* at 29.
- “The General Assembly could begin the process of compiling a record in July 2017 with a goal of enacting new plans by the end of the year.” *Id.* at 28-29.
- In the “interim” between the Supreme Court’s stay of the district court’s judgment on January 10, 2017 and the end of the Supreme Court term on June 30, 2017, rather than engage in “drawing remedial legislative districts,” “the North Carolina General Assembly did just what the Supreme Court allowed it to do – enact policies and legislation that benefit the State as a whole.” *Id.* at 28.

¹ In their April 29, 2019 filing in the instant case, Legislative Defendants asserted that certain of the Hofeller files from before October 31, 2016 may be privileged because they may have been prepared in connection with a declaration that Dr. Hofeller submitted in *Covington* on October 31, 2016. Legislative Defendants provided no support for this claim of possible privilege, but in any event, all of the Hofeller files underlying the discussion in this section post-date October 31, 2016.

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- “This Court should not short-circuit that process [of redistricting] by forcing the General Assembly to draw new maps without first engaging in the legislative and public consultation that this inherently policy-driven task necessitates.” *Id.* at 4.
- “Proceeding on [its proposed] timeline will allow the General Assembly to receive public input, engage in internal discussions about the design of remedial districts, prepare draft remedial plans, receive public responses to those draft remedial plans, and incorporate public feedback into the final plans.” *Id.* at 2.
- “Investigating, drawing, debating, and legislatively enacting satisfactory redistricting plans in time to hold elections in November 2017 or January 2018 would not even begin to allow [for sufficient] input by the public and other members of the General Assembly. And if the process and evidence relied upon by the General Assembly in 2011, developed over five months, was insufficient, it would be impossible for the General Assembly to establish a proper record in just a few days or weeks.” *Id.* at 13.

Similarly, at a July 27, 2017 hearing, Legislative Defendants’ counsel stated: “[R]edistricting is a very arduous, difficult task. It takes a lot of time and attention.” ECF No. 181 at 87:18-19.

Based on these statements by Legislative Defendants, the *Covington* court denied the plaintiffs’ request to order special elections in 2017. The court credited Legislative Defendants’ assertion that “Plaintiffs’ proposed August 11, 2017, deadline will provide them with insufficient time to conduct public hearings and engage in the robust deliberations necessary to develop districting plans.” *Covington v. North Carolina*, 267 F. Supp. 3d 664, 666 (M.D.N.C. 2017). While the court admonished Legislative Defendants for not having started the process sooner, the court agreed with Legislative Defendants that “there are many benefits to a time line that allows for the General Assembly (1) to receive public feedback on the criteria to be used in drawing the remedial districts and proposed remedial districting plans applying those criteria; (2) to revise the proposed plans based on that feedback; and (3) to engage in robust deliberation.” *Id.* at 667. Thus, the court concluded, an expedited schedule for adopting remedial plans, as needed to hold special elections in 2017, “[did] not provide the General Assembly with adequate time to meet their commendable goal of obtaining and considering public input and engaging in robust debate and discussion.” *Id.*

During the remedial phase through the fall of 2017, Legislative Defendants continued stating that no work had been done—including by Dr. Hofeller—to create new districts before July 2017:

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- Representative Lewis made the following statement at a July 26, 2017 hearing of the Joint Redistricting Committees (ECF 184-7 at 11-12):

REP MICHAUX: Are there any other maps that have not yet been released? For instance, anything that has been drawn by Dr. Hofeller or anybody else that you know of that have not yet been released?

REP. LEWIS: Not that I know of, sir.

- Representative Lewis made the following statements at an August 4, 2016 hearing of the Joint Redistricting Committees (ECF 184-8 at 72-73):

REP. MICHAUX: Can you assure this body right now that no redistricting maps have yet been drawn?

REP. LEWIS: I can assure this body that none has been drawn at my direction and that I have direct knowledge of. The only map I'm aware of was submitted by an independent group and presented to this committee last week.

...

REP. MICHAUX: Just to be clear, I'm talking about anything that any chairman or members of the Republican Party or anybody. No map has yet been drawn that should be handed out here? I'm -- people are concerned about the fact -- they think you've already drawn the maps. I want to make sure, coming from you, that you have not yet drawn maps.

REP. LEWIS: Thank you for the question. *I have not yet drawn maps nor have I directed that maps be drawn, nor am I aware of any other entity operating in conjunction with the leadership that has drawn maps.*

On September 7, 2017, Legislative Defendants submitted the hearing transcripts containing these statements to the district court in connection with securing the court's approval of the 2017 Plans.

In a September 22, 2017 submission to the *Covington* court seeking approval of the 2017 Plans, Legislative Defendants further stated: "Shortly following this Court's order of July 31, 2017, the legislative leaders, Senator Ralph Hise and Representative David Lewis, met with the map drawing consultant, Dr. Hofeller. Redistricting concepts

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were discussed with Dr. Hofeller as leaders made plans to comply with the Court's Order." ECF No. 192 at 6.

Likewise, in this case, Legislative Defendants have stated to the Superior Court that no draft maps existed prior to July or August 2017. For instance:

- In response to one of Plaintiffs' interrogatories asking about any "draft or copy" of "all or parts of the 2017 Plans before August 10, 2017," Legislative Defendants responded: "To the best recollection of [Legislative] Defendants, no drafts of the 2017 Plans existed prior to August 10, 2017."
- On April 26, 2019, Legislative Defendants stated in a Superior Court filing that "no legislative redistricting was occurring prior to July 2017," and that "July 1, 2017 to August 31, 2017 represented the period of time that the legislature was actually engaged in and preparing for legislative redistricting."
- At an April 30, 2019 hearing, Plaintiffs' counsel stated that July and August 2017 were the "timeframes when the redistricting actually occurred."

The Hofeller files reveal, however, that Dr. Hofeller had not only created numerous iterations of draft maps before July 2017, but that he had substantially *completed* the 2017 Plans *by the end of June 2017*. Specifically, the files show that Dr. Hofeller had already completed *over 97%* of the new Senate plan and *over 90%* of the new House plan by June 2017.

These facts are inconsistent with Legislative Defendants' prior statements to courts and the public that they had not "start[ed] the laborious process of redistricting" before July 2017, that "no legislative redistricting was occurring prior to July 2017," that "no drafts of the 2017 Plans existed prior to August 10, 2017," that they wanted to "first engag[e] in . . . legislative and public consultation" before "draw[ing] new maps," that they needed "[s]ufficient time" in July and August 2017 "to conduct public hearings and engage in the robust deliberations necessary to develop districting plans," that they only began discussing "redistricting concepts" with Dr. Hofeller in August 2017, and so on.

The inaccuracy of the above statements, and the fact that the entire public redistricting process in the fall of 2017 appears to have been a charade, are obviously relevant to Plaintiffs' claims on the merits, as well as the procedures to be used in any remedial process should Plaintiffs prevail. Plaintiffs cannot obtain this evidence from any other source, and there would be substantial hardship to Plaintiffs and the public interest were the truth concealed.

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b. Legislative Defendants Made False Statements to the Covington Court About the 2017 Redistricting Process and the Criteria Used to Create the Remedial Plans

In its July 31, 2017 order declining to order special elections in 2017 and allowing more time for the creation and enactment of remedial plans, the *Covington* court ordered Legislative Defendants to file, within seven days of enacting new plans, the following:

- “a description of the process the Senate Redistricting Committee, House Redistricting Committee, and General Assembly followed in enacting the new plans, including the identity of all participants involved in the process”;
- “any alternative district plans considered by the Senate Redistricting Committee, House Redistricting Committee, or the General Assembly”; and
- “the criteria the Senate Redistricting Committee, House Redistricting Committee, and General Assembly applied in drawing the districts in the new plans.”

Covington, 267 F. Supp. 3d at 668.

The Hofeller files reveal that statements in Legislative Defendants’ September 7, 2017 submission to the *Covington* court are false or misleading. In purporting to give a “Description of the 2017 Redistricting Process,” Legislative Defendants suggested that the process began “[o]n June 27, 2017,” when Senate President Pro Tempore Phil Berger and House Speaker Tim Moore approved a contract with Dr. Tom Hofeller as a mapdrawing consultant for Rep. David Lewis and Sen. Ralph Hise, the forthcoming chairs of the 2017 redistricting committees in the House and the Senate.” ECF No. 184 at 4. In reality, Dr. Hofeller had been drawing draft remedial maps since at least *August 2016*, and the new maps were substantially complete by June 27, 2017. In describing “Alternative Districting Plans Considered,” Legislative Defendants listed various alternative maps proposed by other members of the General Assembly, but did not list the numerous iterations of alternative draft maps that Dr. Hofeller had created. *Id.* at 9-10.

In the same submission, under the heading “Criteria Applied in Drawing the 2017 House and Senate Districts,” Legislative Defendants stated that the criteria “used to draw new districts in the 2017 House and Senate Redistricting plans” were those adopted by the House and Senate Redistricting Committees “[o]n August 10, 2017.” *Id.* at 6, 10. Of course, Dr. Hofeller had already completed drawing many of the districts by June 2017, over a month-and-a-half before August 10, 2017. Therefore, the criteria adopted by

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House and Senate Redistricting Committees on August 10, 2017 definitively were not the actual criteria “used to draw” these districts.

Again, the fact that the “Adopted Criteria” of the General Assembly were not the real criteria used by Dr Hofeller to create the 2017 Plans is highly relevant to the merits of Plaintiffs’ claims as well as any remedial process should Plaintiffs prevail, and there would be prejudice to Plaintiffs and the public interest if these facts were covered up.

c. Legislative Defendants Made False Statements About the Use of Racial Data in Creating the Remedial Plans

Legislative Defendants made additional false statements to the *Covington* court and the public concerning the use of racial data during the 2017 redistricting process. As you know, after the prior plans were invalidated as unconstitutional racial gerrymanders, *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), Legislative Defendants adopted a formal criterion prohibiting use of racial data for the 2017 Plans: “Data identifying the race of individuals or voters ***shall not be used*** in the drawing of legislative districts in the 2017 House and Senate plans.” ECF No. 184-37 at 2 (emphasis added).

Further, Legislative Defendants repeatedly stated to the court and the public that there was not any racial data in the map-drawing software or other databases, and that they and Dr. Hofeller accordingly did not know the racial composition of the new districts. As just a few examples, Legislative Defendants said the following:

- “[D]ata regarding the race of voters was not used in the drawing of the districts, and, in fact, ***was not even loaded into the computer used by the map drawer to construct the districts.***” ECF No. 192 at 28 (court filing) (emphasis added);
- “[W]e have not had and do not have racial data on any of these districts.” ECF 184-17 (8/24/17 Senate Hr’g Tr. at 66 (statement of Sen. Hise)).
- “Race was not part of the database. It could not be calculated on the system[.]” *Id.* at 102 (statement of Sen. Hise).
- “There was no racial data reviewed in the preparation of this map.” ECF 184-18 (8/25/17 Hr’g Tr. at 20 (statement of Rep. Lewis)).

The Hofeller files reveal that none of the above statements were true. Dr. Hofeller did have “data on the race of voters” “loaded into the computer” he used to “construct the districts.” Dr. Hofeller’s computer in fact appears to have had data

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regarding the racial composition of the proposed districts for each and every iteration of his draft maps. Every Maptitude file with draft House or Senate districts from 2017—including draft maps from August 2017 *after* Legislative Defendants signed an engagement letter formally retaining Dr. Hofeller to create new maps—appears to have had racial data for the districts. Images from some of the Maptitude files even reveal that Dr. Hofeller apparently was displaying the black voting age population or “BVAP” of the new districts in some of the drafts. Dr. Hofeller also had racial data on the draft districts in Excel spreadsheets. Legislative Defendants’ statements that racial data “was not even loaded into the computer used by the map drawer to construct the districts,” that “[r]ace was not part of the database,” and so on were not true.

The full details of all of the above false statements will be made clear at trial, but in light of their existence, any work-product protection that could conceivably apply to the files at issue is defeated by Plaintiffs’ need for the materials and the inability to obtain substantially equivalent evidence elsewhere. *Hardy*, 235 S.E.2d at 841-42. Legislative Defendants’ apparent attempt to cover up this evidence, including by ineffectually designating “the entirety” of the Hofeller files as Highly Confidential under the Consent Protective Order, is troubling.

Notwithstanding the above, if you believe that there are additional draft expert reports similar to the specific files identified in your letter, we are willing to meet and confer about such files. As mentioned, we have no intention of reviewing any such files and would be willing to consider an accommodation to address your concerns, notwithstanding your clear waiver of any privilege. To facilitate such a meet-and-confer process, you should identify each such file, specify the privilege that you believe applies, and provide appropriate legal and factual support for your contention that the file is privileged.

III. Plaintiffs Properly Received the Hofeller Files in Response to their Subpoena

Your letter expresses concerns about “the manner in which Plaintiffs came into possession of” the devices. But as you know, on February 13, 2019, Plaintiffs served a lawful subpoena to Ms. Hofeller, through her lawyer, seeking the entire storage devices, and Ms. Hofeller produced the devices to Plaintiffs in response to the subpoena. As you also know from Ms. Hofeller’s deposition on May 17, 2019, when your co-counsel Ms. Scully questioned Ms. Hofeller about these issues for several hours, Ms. Hofeller testified that she properly obtained possession of the devices on October 11, 2018 from her parents’ home in Raleigh, with her mother Kathleen Hofeller’s knowledge and approval.

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S. Hofeller Dep. at 20:3-26:10; 52:6-10; 81:8-82:2; 110:17-11:24. Ms. Hofeller testified that her mother did “not object to [her] taking the devices,” and when asked whether her mother said “it was okay to take the devices,” Ms. Hofeller testified, “Yes. She encouraged me too.” *Id.* at 21:6-11; *see id.* at 26:3-10 (when Ms. Hofeller asked “Can I take these?” her mother “said absolutely”). Ms. Hofeller testified that “[her] mother gave to [her] unconditionally” “everything on those hard drives that [her] father had left in his room”—the devices were “given to [her] by [her] deceased father’s wife.” *Id.* at 81:8-82:2.

Ms. Hofeller further testified that she properly produced the devices to Plaintiffs in March 2019 in response to Plaintiffs’ February 13, 2019 subpoena, again with her mother’s knowledge and approval. *Id.* at 39:21-41:8. When asked whether her mother had given “her permission or her okay [for Ms. Hofeller] to provide the storage devices . . . to the plaintiffs’ lawyers in response to the subpoena,” Ms. Hofeller testified, “Yes.” *Id.* at 41:2-8.

The following responds to the specific “concerns” raised in your letter:

First, your letter asserts that there is “serious doubt on [Ms. Hofeller’s] mother’s ability to consent to Ms. Hofeller taking of the devices and Ms. Hofeller’s providing of those devices to counsel,” because a temporary guardian was appointed for Kathleen Hofeller “after” she gave the devices to her daughter. That is wrong. As described, Ms. Hofeller testified that her mother gave her the devices containing the Hofeller files on October 11, 2018. S. Hofeller Dep. at 52:6-10. It was only weeks *later*, on November 6, 2018, that an interim guardian ad litem was appointed for Kathleen Hofeller in a then-*ex parte* proceeding, in response to a Petition for Adjudication of Incompetence that had been filed one week earlier. On February 7, 2019, the incompetency petition with respect to Kathleen Hofeller was dismissed for failure to prosecute—without any finding of incompetency—after the parties reached a settlement. *See In re The Matter of Kathleen H. Hofeller*, 18 SP 2634 (N.C. Super. Feb. 7, 2019). That settlement, among other things, precludes the parties from bringing future incompetency proceedings against Kathleen Hofeller. Plaintiffs issued their subpoena to Stephanie Hofeller on February 13, 2019—after the incompetency proceeding was dismissed. The incompetency proceeding thus did not begin until after the date when Ms. Hofeller obtained possession of the devices with her mother’s permission, and the incompetency proceeding concluded (with no finding of incompetency) before the date when Ms. Hofeller sent the devices to Plaintiffs in response to their subpoena again with her mother’s permission,

Second, Ms. Hofeller’s deposition testimony contradicts your assertion that “Ms. Hofeller had no discussions with her mother regarding if there was any business

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information contained on the drives.” When asked whether she had “a specific conversation with [her] mother to tell her that [she] identified business records of [her] father’s on” the devices, Ms. Hofeller testified: “All of those points were at some point mentioned. My mother was aware of the fact that . . . the subpoena for these hard drives was, in fact, for *work-related files only*. So not only was it clear to her that there were *work-related files*, but it was clear to her that the lawyers that would be looking at it on either side would not be looking at anything other than *my father’s work-related files*.” S. Hofeller Dep. at 56:22-57:18 (emphases added); *see id.* at 59:13-18 (“Q. At what point in time did you discuss with your mother the possibility of turning over your father’s business records to Common Cause or to Arnold & Porter? A. The subpoena. That -- that would be when we specifically discussed that.”).

Third, your letter’s suggestion that Mr. Speas and Ms. Mackie should have “advise[d] Ms. Hofeller to seek the advice of an attorney for herself or her mother” is nonsensical. As you know, Stephanie Hofeller testified that she originally contacted Common Cause specifically to request a referral to an attorney independent of her father who could represent her mother in the incompetency proceeding. S. Hofeller Dep. at 31:7-19; 36:24-38:9. Common Cause provided such a referral, leading to Ms. Hofeller’s mother retaining an attorney to represent her in the incompetency proceeding. *Id.* at 59:5-12. As to Ms. Hofeller, she is the one who proactively contacted Common Cause, raised the fact that she had the electronic storage devices, and affirmatively offered to provide the devices to Common Cause. *Id.* at 31:7-38:17. We are aware of no obligation of a lawyer to advise a non-adverse third party like Ms. Hofeller to obtain counsel in these circumstances, and your letter does not identify any such obligation. In any event, the point is moot because Plaintiffs served their subpoena on Ms. Hofeller through her attorney, Tom Sparks, who later defended her deposition in this case. Ms. Hofeller was represented in connection with Plaintiffs’ subpoena.

Finally, your letter asserts that Mr. Speas and Ms. Mackie “told [Ms. Hofeller] that ‘anyone,’ including plaintiffs or legislative defendants, could only look at the content of items that were explicitly and obviously related to this case, and as a result, she should not be concerned about a privacy issue with her or her mother.” But Plaintiffs’ counsel have in fact attempted to shield sensitive personal information of the Hofeller family from disclosure, including through the designation of such materials as Highly Confidential pursuant to the Court’s May 1, 2019 Order. It is Legislative Defendants who successfully insisted that personal sensitive information in the Hofeller files be shared with other parties in the case, rather than filtered out and never reviewed by anyone. Beyond that, we understand from Ms. Hofeller that she approves of Plaintiffs’ review and use of the Hofeller files pertaining to Dr. Hofeller’s political and redistricting work. In any event, while Ms. Hofeller testified that she and her mother “felt . . . that the

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process would most likely be centered around provably pertinent files,” Ms. Hofeller also testified that she “assured her [mother] that she should be aware that once you -- and, again, this is something my father taught me. Once you let go of it, you don’t have control of it anymore so you can’t be guaranteed what will and won’t be disclosed, so it’s something you should be prepared for when you are involved with discovery.” S. Hofeller Dep. at 40:1-15.

IV. Legislative Defendants’ Assertions Regarding Plaintiffs’ Counsel’s Professional Responsibilities Are Frivolous and Improper

Your letter states that you “insist on compliance with the North Carolina Rules of Civil Procedure and Rules of Professional Responsibility,” and that Legislative Defendants “are considering all options available to them to enforce their rights” “[s]hould [Plaintiffs’ counsel] persist in neglecting [their] professional responsibilities.” But you do not identify a single rule of professional conduct purportedly implicated by Plaintiffs’ counsel’s actions. Your nonspecific references to Plaintiffs’ counsel’s “professional responsibilities” appear to be nothing more than an attempt to intimidate. We note that frivolous claims of professional ethics violations made to obtain an advantage in a civil matter are impermissible, and we refer you to District of Columbia Rule of Professional Conduct 8.4(g) and North Carolina Rule of Professional Responsibility 3.1. Under Rule 3.1, “a threat to file disciplinary charges is . . . improper if the disciplinary charges are frivolous.”²

V. Legislative Defendants’ Specific Demands Are Baseless and Unreasonable

First, your letter demands that Plaintiffs “immediately cease and desist reviewing all materials produced by Ms. Hofeller and particularly all files unrelated to North Carolina.” But Legislative Defendants, as leaders of the North Carolina General Assembly, have no legal interest in, and no standing to make demands regarding, files that are “unrelated to North Carolina.” Moreover, while this demand is predicated on Legislative Defendants’ (erroneous) understanding of Ms. Hofeller’s intent in producing the devices in response to Plaintiffs’ subpoena, Ms. Hofeller’s attorney recently confirmed in writing—prior to the filings in the federal census case—that Ms. Hofeller consents to use of the Hofeller files in connection with matters outside North Carolina.

Second, your letter demands that we “immediately cease and desist providing any or all of these materials to third parties unrelated to this case, as [we] have apparently

² Suzanne Lever, *I’m Telling Mom! Reporting Professional Misconduct*, N.C. State Bar Journal (June 2014), <https://www.ncbar.gov/for-lawyers/ethics/ethics-articles/im-telling-mom-reporting-professional-misconduct>.

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recently done in a matter pending in New York.” Again, Legislative Defendants have no standing to make demands regarding materials unrelated to North Carolina. Anyway, your demand is contrary to hornbook law. “The general rule . . . is that information produced in discovery in a civil case may be used in other cases.” *United States v. Comstock*, 2012 WL 1119949, at *1 (E.D.N.C. Apr. 3, 2012). Sharing discovery with litigants in other cases is not just permissible, but courts “have overwhelmingly and decisively endorsed the sharing of discovery information among different plaintiffs, in different cases, in different courts.” *Burlington City Bd. of Educ. v. U.S. Mineral Prod. Co.*, 115 F.R.D. 188, 190 (M.D.N.C. 1987) (emphasis added). Absent a protective order to the contrary (and there is no such order here with respect to the files at issue), nothing “prevent[s] [a litigant] who lawfully has obtained discovery . . . from using the discovery elsewhere.” *In re Accent Delight Int’l Ltd.*, 869 F.3d 121, 135 (2d Cir. 2017); see also *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Grp., Inc.*, 121 F.R.D. 264, 268-69 (M.D.N.C. 1988) (“[A] party needs to present good cause for prohibiting the dissemination of non-confidential discovery information or from prohibiting the utilization of such discovery in other litigation.”); *Ohio Valley Envtl. Coal. v. Elk Run Coal Co.*, 291 F.R.D. 114, 122 (S.D. W. Va. 2013) (“[T]he potential use of the fruits of discovery in other litigation is not, alone, a basis for a protective order.”); *FTC v. Digital Interactive Assocs., Inc.*, 1996 WL 912156, at *3 (D. Colo. Nov. 18, 1996) (“[D]issemination of information to litigants in other forums is often encouraged for purposes of judicial economy.”); *United States v. Hooker Chemicals & Plastics Corp.*, 90 F.R.D. 421, 426 (W.D.N.Y. 1981) (“Use of the discovery fruits disclosed in one lawsuit in connection with other litigation, and even in collaboration among plaintiffs’ attorneys, comes squarely within the purposes of the Federal Rules of Civil Procedure”); *Patterson v. Ford Motor Co.*, 85 F.R.D. 152, 153-54 (W.D. Tex. 1980) (similar).

Third, your letter demands, bizarrely, that Plaintiffs “return all of the produced materials to the Trustee for the Kathleen H. Hofeller Irrevocable Trust.” You cite no legal authority, and we can think of none, for the notion that a litigant can demand that subpoenaed electronic files be returned to the “Trustee” of a financial trust of the mother of the subpoenaed individual. Even if Kathleen Hofeller rather than Stephanie Hofeller had produced the files in response to the subpoena (which she did not), Kathleen Hofeller is legally competent, and you do not explain why the materials would go to a “Trustee” rather than to her. It appears that you are making this odd request because Kathleen Hofeller herself does not want return of the materials.

Fourth, your letter asks that Plaintiffs identify all “individuals [Plaintiffs’ counsel’s law firms] employ” who have reviewed the “produced materials.” As stated above, we can represent that no one at our law firms has any intention of reviewing any of the five specific files identified in your letter as purportedly privileged. We have no

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obligation to provide you further information regarding names of attorneys who have worked on this matter.

Fifth, your letter also asks which of the files that you characterize as “wrongfully produced materials have been shared outside [Plaintiffs’ counsel’s] firms.” While we have no obligation to respond, we can advise you of the following: As you know, on May 6, 2019, we provided complete copies of all of the Hofeller files to all three sets of Defendants, including Legislative Defendants represented by you, Intervenor Defendants represented by separate private counsel, and State Defendants represented by the North Carolina Attorney General’s Office. We provided complete copies of all of the Hofeller files to each set of Defendants because you demanded that we do so. We have no information about whether and to what extent Defendants may have shared files with others.

Lastly, your letter demands that Plaintiffs “attest that all copies of the materials wrongfully produced by Ms. Hofeller are no longer in [our] possession and have been destroyed.” Legislative Defendants have offered no legitimate basis for this demand. Moreover, given that the Hofeller files reveal wrongdoing by government officials, “destroy[ing]” the files could constitute spoliation.

Sincerely,

/s/ R. Stanton Jones
R. Stanton Jones

EXHIBIT K

May 24, 2019

VIA E-MAIL

E. Mark Braden
Baker & Hostetler LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5403
MBraden@bakerlaw.com

Re: *Common Cause v. Lewis*, 18 CVS 0140001 (Wake County Sup. Ct., N.C.)

Dear Mr. Braden:

On behalf of Plaintiffs in the above-captioned lawsuit, we write in response to your May 16, 2019 letter on behalf of the Virginia House of Delegates concerning certain electronic storage devices produced by Stephanie Hofeller to the *Common Cause* Plaintiffs in response to their subpoena to Ms. Hofeller. Your letter expresses uncertainty about how Ms. Hofeller obtained possession of the devices, asserts that the devices contain some “privileged” information of the House of Delegates, and makes several specific demands.

First, your letter states that you did not know, as of May 16, “how Ms. Hofeller came to possess” the devices at issue. But as you now know from Ms. Hofeller’s deposition one day later on May 17, when your colleague from Baker & Hostetler questioned Ms. Hofeller about this issue for several hours, Ms. Hofeller properly obtained possession of the devices in October 2018 from her parents’ home in Raleigh, with her mother’s knowledge and approval. Ms. Hofeller then properly produced the devices to the *Common Cause* Plaintiffs in March 2019, again with her mother’s knowledge and approval, in response to Plaintiffs’ February 13, 2019 subpoena. Counsel for all three sets of Defendants in *Common Cause*—including you—received written notice of Plaintiffs’ subpoena seeking the entire storage devices on February 13, 2019, and no one moved to quash or otherwise raised any objection to the subpoena.

Second, your letter asserts that the devices contain “privileged” information relating to Dr. Hofeller’s work as a testifying expert for the House of Delegates in

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Bethune-Hill v. Virginia State Board of Elections, No. 15-680 (U.S.), and that such information was “wrongfully produced” to the *Common Cause* Plaintiffs. But your letter does not identify any purportedly privileged document, does not even specify what supposed privilege(s) you are claiming, and makes no attempt to substantiate any such claim of privilege. We note that there is no plausible claim of attorney-client privilege because Dr. Hofeller was neither an attorney nor a client in *Bethune-Hill*. Nor does the attorney work-product doctrine protect any material possessed by an expert witness that “contains factual ingredients,” a concept that is “interpreted broadly.” Fed. R. Civ. P. 26 comm. notes. As applied to materials possessed by a testifying expert witness like Dr. Hofeller, the attorney work-product doctrine protects only materials that reflect “the theories or mental impressions of counsel.” *Id.* You have identified no such materials.

In all events, the House of Delegates has waived any privilege claim. Most notably, at your express demand, the *Common Cause* Plaintiffs transmitted complete copies of the full contents of the storage devices—without filtering out *any* of the files as we had previously proposed—to all three sets of Defendants in the *Common Cause* case, none of which holds any privileged relationship with the House of Delegates. You successfully requested that the North Carolina court order the *Common Cause* Plaintiffs to transmit complete copies of the devices to all Defendants even though weeks earlier, on April 8, 2019, we sent you a searchable index of file names and file paths that made apparent the devices contain files involving *Bethune-Hill*.

Notwithstanding the above, if you believe that the devices include files containing privileged information of the House of Delegates, you should identify each such file, specify the privilege that you believe applies, and provide appropriate legal and factual support for your contention that the information is privileged.

Third, the following responds to your specific demands:

Your demands that we “cease reviewing the entirety of the materials” and “return the entirety of the produced materials to the Estate of Dr. Hofeller” are legally baseless and unreasonable. As you presumably know, the overwhelming majority of the files on the devices have nothing to do with Virginia or the *Bethune-Hill* case. There is thus no conceivable basis for you to demand that we “cease reviewing *the entirety* of the materials” and “return *the entirety* of the produced materials to” anyone. The Virginia House of Delegates obviously has no legal interest in, and no standing to make demands regarding, files that are wholly unrelated to Virginia. By contrast, much of the information on these devices is directly relevant to North Carolina redistricting. Indeed, it is the *Common Cause* Plaintiffs—not their counsel—who have legal custody and control of the materials, and the *Common Cause* Plaintiffs have every right to use

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May 24, 2019
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materials that were properly obtained through lawful subpoena and are relevant to the *Common Cause* case in the upcoming trial there.

In addition, while you demand that we return the devices to “the Estate of Dr. Hofeller,” we understand that no estate was ever created for Dr. Hofeller, and thus there is no “Estate of Dr. Hofeller.” Beyond that, you and your co-counsel in *Common Cause* already asked the North Carolina court, at the April 30, 2019 hearing, to order that the devices be returned to the Estate of Dr. Hofeller. The North Carolina court declined to order any return of the devices, instead directing Plaintiffs to provide compete copies of the full contents of the devices to all Defendants, as you had originally requested.

In response to your inquiry about who at our law firms has reviewed what you call the “wrongfully produced materials,” while we have no obligation to answer this question and dispute your characterization of the materials, we can represent that no one at any of our law firms has reviewed any file on the devices involving the *Bethune-Hill* case. Perkins Coie, which as your letter notes represents plaintiffs in *Bethune-Hill*, does not have possession of, or direct access to, the devices or the files on the devices. And Perkins Coie has no intention of accessing any files on the devices involving *Bethune-Hill*.

Your letter also asks that we identify anyone outside our law firms with whom any “wrongfully produced materials” have been shared. As stated, on May 6, 2019, we provided complete copies of the full contents of the storage devices to all three sets of Defendants in the *Common Cause* case, including Legislative Defendants represented by you, Intervenor Defendants represented by separate private counsel, and State Defendants represented by the North Carolina Attorney General’s Office. We provided complete copies of the entire storage devices to each set of Defendants because the North Carolina court, at your urging, ordered us to do so. We have no information about whether and to what extent the *Common Cause* Defendants may have shared the devices or any contents of the devices with others.

Finally, we are troubled by your letter’s indication that the Virginia House of Delegates and/or those acting on its behalf have conducted an “initial review of the voluminous materials” provided by Ms. Hofeller. As you know, certain information on the devices—namely 1,001 specified files—was designated “Highly Confidential / Attorneys Eyes Only” as directed by the North Carolina court pursuant to the Consent Protective Order in *Common Cause*. That designation means that the materials “may be disclosed only to outside attorneys of the receiving party,” in this instance you and your co-counsel solely in your capacities as outside counsel for Legislative Defendants in the *Common Cause* case. Please inform us, no later than May 31, 2019, whether any of those

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1,001 files have been shared with, disseminated to, or reviewed by anyone other than Legislative Defendants' counsel in *Common Cause*.

Sincerely,

/s/ Edwin M. Speas
Edwin M. Speas

/s/Marc E. Elias
Marc E. Elias

/s/ R. Stanton Jones
R. Stanton Jones

EXHIBIT L

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Phillip J. Strach
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May 31, 2019

Mr. Stanton Jones
Via Email (Stanton.jones@arnoldporter.com)
Arnold & Porter
601 Massachusetts Ave., NW
Washington, DC 20001

RE: *Common Cause, et al. v. David R. Lewis, et al.*
Wake County Superior Court Case No.: 18-cvs-014001

Dear Stanton:

We write today on behalf of legislative defendants in the following cases arising out of North Carolina: *Dickson v. Rucho*, 11-cvs-16896 (N.C. Sup. Ct.) *NC NAACP v. McCrory*, (1:13-cv-00658 (M.D.N.C.) *Currie v. North Carolina*, 13-cvs-1419 (N.C. Sup. Ct.) *Harris v. Cooper*, 1:13-cv-00949 (M.D.N.C.) *Covington v. North Carolina*, 1:15-cv-00399 (M.D.N.C.) *Common Cause v. Rucho*, 1:16-cv-01026 (M.D.N.C.) the matter referenced above, and any cases consolidated or combined with the foregoing matters.

Our clients are extremely concerned and disturbed about recent revelations regarding the materials produced by Stephanie Hofeller in response to the document subpoena issued to her by Plaintiffs on February 13, 2019. These materials were not made available to us until the evening of Friday, May 3rd, after the Court in the referenced matter ordered Plaintiffs to produce the entirety of the materials to all parties as clearly required by the North Carolina Rules of Civil Procedure.

Now that we have been able to process our own complete index of the data taken by Ms. Hofeller, we make several observations. First, it is apparent that the index of the files you deem “sensitive personal information” is woefully incomplete. For instance, even simple searches of our complete index reveal that files containing confidential financial information were left out of the 1,001 files Plaintiffs designated “Highly Confidential/Outside Attorney’s Eyes Only.” As a result, and for the additional reasons discussed below, *Legislative Defendants hereby designate the entirety of the materials produced by Ms. Hofeller as “Highly Confidential/Outside Attorney’s Eyes Only”* pursuant to the Consent Protective Order in force in the referenced action.

Next, our clients are deeply concerned that Plaintiffs and/or their counsel have been reviewing files in the Hofeller materials without first providing Legislative Defendants or the rightful owner of the materials an opportunity to conduct a privilege review. That there are many files in these materials that are protected by the attorney-client or work product privilege, or protected expert witness

materials, is beyond dispute. As just an example, the following filepath names from our index contain protected North Carolina case-related materials:

NC\ES0001A\C\NC 2015 Backup\NC Jan 2015 Expert Report\2014 GENERAL ELECTION SUMMARY.pdf

NC\ES0001A\C\NC 2015 Backup\NC Jan 2015 Expert Report\CVAP ACS 2009-2013.xlsx

NC\ES0001A\C\NC 2015 Backup\NC Jan 2015 Expert Report\North Carolina Declaration January 8 2014 1430.doc

NC\ES0001A\C\NC 2015 Backup\NC Jan 2015 Expert Report\North Carolina Declaration January 17 2014 2300.doc

NC\ES0018A\C\~\$Covington - Named Plaintiffs - For Mapping.xlsx

The file names alone clearly reveal that these are expert witness materials created by Dr. Hofeller in connection with North Carolina legal matters. These materials may not be accessed or viewed by Plaintiffs or their counsel unless and until our clients or the rightful owner of the materials have had an opportunity to determine whether these and other North Carolina-related files are covered by any applicable privilege. While Dr. Hofeller was not an attorney, he often worked with North Carolina attorneys in developing expert reports and other materials for use in litigation. In this work Dr. Hofeller communicated with attorneys and developed drafts, most or all of which would be privileged and not discoverable, much less reviewable by opposing lawyers. Not only have you apparently been reviewing likely privileged materials, Plaintiffs actually filed some of them in their April 26, 2019 filing in this case.

Moreover, the manner in which Plaintiffs came into possession of these files raise grave questions for our clients. At her deposition in the referenced case on May 17, 2019, Ms. Hofeller testified that she took the storage devices that she ultimately turned over pursuant to the subpoena while visiting her mother on October 11, 2018 at her mother's apartment at Springmoor Retirement Community (52:6-15). Ms. Hofeller asked her mother if she could take the drives because she was looking for pictures and other documents of hers that she thought might be on the drives. (26:5-10; 50:2-19). Notably, however, Ms. Hofeller testified that she was aware that a guardian had been appointed over both her mother and her mother's estate shortly after this encounter with her mother. (194:23-195:2). This casts serious doubt on her mother's ability to consent to Ms. Hofeller's taking of the devices and Ms. Hofeller's providing of those devices to counsel for Plaintiffs after her mother was placed under guardianship.

Worse still, is that Ms. Hofeller testified she assumed that there would be work files on the devices, and wasn't surprised when she found such work materials on the drive as Dr. Hofeller "always had information related to his work on the personal hard drive." (55:3-18). Yet, Ms. Hofeller had no discussions with her mother regarding if there was any business information contained on the drives as she "didn't wish to assert [herself] into the business intentionally" (51:6-18). Moreover, upon plugging the drives into her own laptop, Ms. Hofeller found information pertinent to Dr. Hofeller's work. (29:12-30:23) She testified that despite not discussing the business materials with her mother

that she “was more like, Common Cause may have an interest in these work files.” (56:12-13). Further, Ms. Hofeller reviewed all of the drives prior to sending them to counsel for Plaintiffs. (46:19-24). There is no doubt, then, that Ms. Hofeller was aware that she was delivering Dr. Hofeller’s confidential work files to counsel for Plaintiffs in this case.

Indeed, when Ms. Hofeller first reached out to Bob Phillips at Common Cause, it was for a referral to find an attorney for her mother during the incompetency proceedings. (31:15-32:6). She stated that she contacted Common Cause because she wanted “independent” counsel for her mother, and was concerned about potential political allegiances of lawyers she did not know in Raleigh. (37:14-38:9). She originally spoke with Bob Phillips in early November, 2018 by phone. (89:8-23). However, she also indicated that at the time she reached out, she knew that Common Cause was “representing the interest of voters that felt that this redistricting represented a violation of their constitutional rights” including maps that were drawn by Dr. Hofeller. (89:24-90:9). She also understood that she knew that Common Cause had historically been antagonistic to Dr. Hofeller’s work. (91:3-7).

Ms. Hofeller was referred by Mr. Phillips to Jane Pinsky, another employee of Common Cause. Ms. Hofeller first brought up the drives in an “anecdotal” way in December, 2018 to Pinsky, indicating she had some hard drives of Dr. Hofeller’s. (32:14-35:24; 100:22-101:1). Pinsky then explained to Ms. Hofeller that a current case was on appeal, but that in a new case about state legislative districts they would be “accepting new evidence.” (33:20-35:15). Ms. Hofeller praised Common Cause for their “progress” in that this was “the furthest [she had] ever seen a plaintiff get with anything [her] father drew.” (36:12-20). Ms. Pinsky then put Ms. Hofeller in touch with Eddie Speas and Caroline Mackie. (38:10-17).

Mr. Speas texted Ms. Hofeller shortly after her conversation with Ms. Pinsky in December 2018 and Ms. Hofeller then spoke with Mr. Speas and Ms. Mackie around the holidays. (38:10-17; 108-110). At the time of these conversations, Mr. Speas and Ms. Mackie were aware that there were issues regarding Mrs. Hofeller’s competency. (118:19-119:3).

In those calls, Ms. Hofeller indicated that she had material that might be relevant to the case, specifically external storage devices, she wanted to provide to them. (111:3-16; 38:21-39:1). She also disclosed that these drives contained information regarding personal data for herself and her parents in addition to the work data (127: 15-128: 20). Some of this personal data included personal health information about both Tom and Kathy Hofeller as well as Stephanie Hofeller’s children. (149:14-150:7).

Rather than advise Ms. Hofeller to seek the advice of an attorney for herself or her mother, Mr. Speas and Ms. Mackie told her that it would be best to turn over the data in its entirety rather than piece meal. (115:8-20). *Ms. Mackie and Mr. Speas also told her that “anyone” including plaintiffs or legislative defendants, could only look at the content of items that were explicitly and obviously related to this case, and as a result, she should not be concerned about a privacy issue with her or her mother.* (115:24-117:8).

When asked whether Ms. Hofeller engaged in any sort of review to determine whether the files on the drives contained privileged information, she testified that she had been told that the best way to “preserve the integrity” of the data was not to pick and choose and to leave everything as it was (64:9-65:5). Specifically, “in the discussion that I had with the attorneys Caroline Mackie and Eddie Speas, there was a discussion on how it would be best recognized in court as...a good chain of custody, transparency. There would be no accusation of picking and choosing, of keeping some things secret and some things not if the media were turned over to a third party in its exact state.” (67:7-18; 79:19-25).

These are just the facts our clients know from Ms. Hofeller’s deposition and other evidence so far. It appears that serious questions exist as to whether Kathy Hofeller was competent to give any alleged consent to Stephanie Hofeller to take Kathy Hofeller’s property, or the property of any other individuals or entities, or whether Kathy Hofeller was taken advantage of by her estranged daughter. Even if Kathy Hofeller was competent to give Stephanie Hofeller permission to take these materials, which we doubt, grave questions exist as to whether Kathy Hofeller could even give permission to her daughter to take drives containing information belonging to Dr. Hofeller’s business. Serious questions also exist as to whether Plaintiffs’ counsel should have advised Ms. Hofeller to seek counsel in transferring this property and whether Ms. Hofeller was misled as to what aspects of that property, if even properly in her possession, should be turned over to the Plaintiffs. Serious questions also exist as to whether Plaintiffs’ counsel encouraged Ms. Hofeller to transfer this property despite knowing that it contained or likely contained privileged information. At a minimum, North Carolina counsel would be familiar with N.C. R. Civ. P. 26(b)(4)(d)-(e), which protects draft reports and expert communications with counsel from discovery. Ms. Hofeller herself appears to have understood that such materials and communications existed on these drives yet counsel for Plaintiffs took no steps to ensure they did not come into possession of, much less review, such privileged materials and communications.

As our forensic vendor is continuing the process of processing the vast amount of data Ms. Hofeller took, we have not yet had an opportunity to examine all of the North Carolina-related files that may exist. Therefore, we reserve the right to identify and communicate any additional improper conduct that we may discover as we review the files. In the meantime, based on the undisputed facts known to the parties thus far, we demand that Plaintiffs and their counsel do the following immediately:

- (1) immediately cease and desist reviewing all materials produced by Ms. Hofeller, and particularly all files unrelated to North Carolina. Plaintiffs’ counsel Speas and Mackie assured Ms. Hofeller that only files related to this case could be reviewed, but it is clear based on recent events that Plaintiffs have not kept their word with Ms. Hofeller;
- (2) immediately cease and desist providing any or all of these materials to third parties unrelated to this case, as you have apparently recently done in a matter pending in New York;
- (3) return all of the produced materials to the Trustee for the Kathleen H. Hofeller Irrevocable Trust to allow for a privilege review of Dr. Hofeller’s documents;

May 31, 2019

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- (4) identify by name all individuals you employ who have reviewed the produced materials, the date(s) on which they reviewed those materials, and which materials they reviewed with sufficient specificity that we can determine which materials are at issue;
- (5) inform us which of these wrongfully produced materials have been shared outside your firms, including but not limited to any expert witnesses in this case, and, if so, with whom and which materials with sufficient specificity to allow us to assess the scope of the intrusion into protected materials; and,
- (6) attest that all copies of the materials wrongfully produced by Ms. Hofeller are no longer in your possession and have been destroyed.

We remain willing to meet and confer on these issues, but must insist on your compliance with the North Carolina Rules of Civil Procedure and Rules of Professional Responsibility. Should you persist in neglecting your professional responsibilities, our clients are considering all options available to them to enforce their rights. We appreciate your attention and compliance with the steps outlined above by June 5, 2019.

Sincerely,



Phillip J. Strach

CC: All Counsel of Record
PJS:amr

38739743.1

EXHIBIT M

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3 SANDRA LITTLE COVINGTON, et al.,) CASE NO. 1:15CV399
4 Plaintiffs,)
5 V.)
6 STATE OF NORTH CAROLINA, et al.,) Greensboro, North Carolina
Defendants.) October 15, 2017
10:05 a.m.

7 TRANSCRIPT OF THE **MOTIONS HEARING**
8 BEFORE THE HONORABLE THOMAS D. SCHROEDER
9 THE HONORABLE CATHERINE C. EAGLES
10 UNITED STATES DISTRICT JUDGES
and
THE HONORABLE JAMES A. WYNN
UNITED STATES FOURTH CIRCUIT JUDGE

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1 there's no argument here for a Section 2 Voting Rights
2 district. So I'm having a hard time understanding how they're
3 supposed to take race into account to fix a problem where race
4 was taken into account.

5 **MS. EARLS:** And I'm not arguing for a narrow
6 tailoring standard. I'm arguing for a -- the ability to
7 examine whether the prior use of race has been alleviated, has
8 been remedied. I don't know any other way to say it.

9 **JUDGE EAGLES:** All right. Anything else?

10 **MS. EARLS:** No, thank you, Your Honor.

11 **JUDGE EAGLES:** Thank you. We'll at least start with
12 the Legislative Defendants' arguments. We'll probably have to
13 take a lunch break at some point, but not right away.

14 **MR. STRACH:** Thank you, Your Honor. May it please
15 the Court, good afternoon.

16 So I will be brief, and I will mainly respond to what
17 I've heard today. We've obviously briefed this. Both parties
18 have briefed it thoroughly and can answer any questions that
19 you have.

20 I think it's important to note just from the outset
21 the difference between the 2017 districts in the process versus
22 what this Court criticized from 2011. It is undisputed here
23 that there was no target, there was no 50 percent rule, et
24 cetera, followed.

25 This Court also criticized the legislature's use of a

1 rough proportionality-type rule. There is none of that in this
2 particular case.

3 I think it's also undisputed that just
4 circumstantially, looking at the districts, even the ones that
5 remain challenged, that the legislature followed traditional
6 redistricting principles to a much greater degree than was ever
7 followed in 2011.

8 So just from the outset, we think in terms of direct
9 evidence, circumstantial evidence, this is simply not the same
10 case. None of the evidence that this Court found significant
11 in the 2011 case is present in this particular case.

12 Just to address the *Abrams* case, which has been
13 mentioned a few times, what was significant there was that
14 involved the DOJ's former max-black policy where they said,
15 hey, you got to draw as many majority-black districts as
16 possible. When the case came back down and the legislature
17 redrew, the legislature said, well, our preference was to
18 follow what DOJ said. They wanted three, but we gave two
19 because we were still following that policy, and we were
20 worried about what might happen if we didn't. Well, that's
21 very similar to what this Court criticized of the legislature
22 in 2011, adopting an overall policy of a target that is not
23 warranted under the facts of the case.

24 So *Abrams* is a completely different case, and there
25 really is no precedent that I am aware of that the burden flips

1 on the legislature once it passes new plans, and they are no
2 longer entitled to the presumption of constitutionality that
3 has always been --

4 **JUDGE WYNN:** But to be clear -- and I understand the
5 characterization the Court criticized. What we did was we
6 found that the legislature had created -- had committed a
7 constitutional violation, and the basis for this violation
8 arose from these facts. It wasn't just a criticism. We don't
9 have an opinion one way or the other if you choose to do these
10 things. The question is whether doing so violates the
11 constitution. So using the term "criticize," that sort of
12 gives us a position as though we are taking a position. We're
13 not. We're simply looking at the constitution to determine if
14 a violation was created.

15 I do have a question, and, that is, in drawing the
16 present maps, to what extent did the map drawers look at the
17 maps that we found to be unconstitutional?

18 **MR. STRACH:** They did not look at them. They weren't
19 on the map drawer's computer. Obviously everybody knows what
20 those districts look like in general, but they were not
21 expressly used to actually draw the maps. I mean, basically,
22 the map drawer started with a clean slate.

23 **JUDGE EAGLES:** How do we know that? What's the
24 evidence of that?

25 **MR. STRACH:** I think if you look at the districts,

1 they look so much dramatically different. Let's just take
2 Senate District 21, for instance. If the Court recalls under
3 the 2011 map, that was the Hoke-Cumberland district, started in
4 Hoke, came into the Cumberland. If the Court recalls, it had
5 about five or six fingers that went all into Cumberland County
6 in weird, meandering ways. There's no doubt that that was the
7 strangest looking district in the whole map. Well, it's
8 clearly a lot different looking district, it's a lot more
9 compact, and it was drawn to ensure that the incumbent in that
10 district would have -- it's also, by the way, significantly --
11 has a significantly lower BVAP level, which is the case in many
12 of these districts.

13 So we think just looking at the districts on their
14 face shows that the legislature started over and followed whole
15 precincts, tried to follow municipal boundaries where they
16 could, did a better job of following municipal boundaries than
17 other maps that were presented, obviously followed the Whole
18 County Provision, and also ensured that incumbents were
19 protected.

20 The criteria expressly said that we're going to do
21 two things. Number one, we're not going to pair incumbents
22 unless we have to under the Whole County Provision because that
23 is correct, that there are some incumbents that get paired by
24 that grouping. Nothing you can do about that, but we said
25 where that's not required, we're only going to not pair

1 incumbents, we're going to also ensure they have a district
2 that they have a reasonable chance of winning. That means
3 looking at the political data and making sure that if Senator
4 Clark, who is a Democrat, has one district in the
5 Hoke-Cumberland grouping and Senator Meredith, who is in the
6 other part of that grouping, who's a Republican, that we're not
7 going to hurt either one of them's chances of winning an
8 election because we have to come back to do a court order
9 redistricting in the middle of the decade.

10 **JUDGE SCHROEDER:** How is the use of that criteria not
11 a proxy for race, given that you were limited to the districts
12 that you were redrawing, which already had high BVAPs?

13 **MR. STRACH:** I don't think there is any evidence that
14 that's a proxy for race. We didn't look at race. There was no
15 racial data on the computer. It was simply looking at the --
16 we've disclosed what elections that were being looked at in
17 order to ensure that, as you moved around the map, you weren't
18 including precincts in a district that would undermine one of
19 their's chances of winning an election.

20 **JUDGE EAGLES:** Where is that evidence?

21 **MR. STRACH:** Well, that's what they all said they
22 were doing when they were -- during the legislative debates.
23 They said, we didn't use race. We used election data to
24 protect incumbents. That's what they said.

25 **JUDGE SCHROEDER:** Who were the legislators who

1 directed Dr. Hofeller in this case for the remedial map?

2 **MR. STRACH:** There were multiple legislators involved
3 in the process. Representative Lewis was the senior chairman
4 on the House side, and Senator Ralph Hise was on the Senate
5 side, but there were multiple legislators involved. When you
6 read the legislative record, you can see that there were
7 obviously many folks involved on the House and the Senate side
8 and in the debates. It was not solely run by Representative
9 Lewis and Senator Hise. There were others involved.

10 **JUDGE EAGLES:** So the Eighth Circuit in this *Harvell*
11 *v. Blytheville School District* case, which is a little -- kind
12 of old now, it's about school district redistricting, said:

13 "The District Court need not defer to a state
14 proposed remedial plan if the plan does not completely remedy
15 the violation."

16 Do you agree with that?

17 **MR. STRACH:** Your Honor, I'm sorry. I haven't read
18 the case. I'm not familiar with that, so I can't comment on
19 the context of what you're reading from.

20 **JUDGE EAGLES:** But just that general rule, do you
21 think that that's fair? Do you think that's -- well, I
22 complained about fair earlier. Let me revoke that question.
23 Do you think that's an accurate statement of the law that if
24 the plan does not completely remedy the violation, the Court
25 need not defer?

1 **MR. STRACH:** Well, Your Honor, I would put it
2 differently. The Court has the power to enforce the judgment,
3 and if the judgment hasn't been complied with, the Court can
4 require compliance with its judgment. That's the way I would
5 put it. I believe that the districts that have been challenged
6 here all clearly comply with the Court's judgment and that the
7 legislature did exactly what it was told to do.

8 In terms of looking at particular districts, let me
9 just briefly address this. We've heard this issue of naturally
10 occurring. What we said in the notice of filing was that if
11 there's a district that's above 50 percent, then it would have
12 to be because it was naturally occurring because we didn't look
13 at race, and we weren't justifying these on the Voting Rights
14 Act. So that would be the only way it would be possible for
15 that to happen.

16 I would point out that this Court recognized that
17 that could be possible. In the opinion at page 178, the Court
18 said:

19 "For instance, if during redistricting the General
20 Assembly had followed traditional redistricting criteria and,
21 in doing so, drawn districts that incidentally contained
22 majority-black populations, race would not have predominated in
23 drawing those districts," citing *Shaw*. The Court went on to
24 note that the Plaintiffs themselves had not challenged House
25 Districts 23 and 27, which was a 50 -- which are 50 percent

1 districts because they are dictated by the county lines.

2 The Court did not note this, but I would also note
3 that the Plaintiffs here did not challenge 2017 House District
4 101, which is in Mecklenburg County, which is also above
5 50 percent, and I would submit that's because, again, it
6 follows whole precincts, it follows boundaries in Mecklenburg
7 County, and it's 50 percent because that's what you're going to
8 get when you draw that.

9 So to the extent that we had districts that look like
10 that, I would say not only is that why -- what explains them, I
11 would say that this Court actually recognized that that could
12 be the case.

13 In terms of the use --

14 **JUDGE WYNN:** So on the question of race -- and I'm
15 just trying to understand at least the proposition it wasn't
16 considered. We had Dr. Hofeller, who was the same one that
17 drew it and drew it with that consideration in mind in the
18 first instance and, of course, the same legislature, and I
19 think we all can agree there -- at least it seems to be you're
20 agreeing that there's some general knowledge as to where the
21 African-American population is. Is it your contention they
22 simply ignored that, that general knowledge of where the
23 African-American population exists?

24 **MR. STRACH:** Your Honor, the position we have taken
25 is, at best, that that is a consciousness of race, what the

1 Supreme Court has always said is not predominant -- racial
2 predominance. There is no evidence, none whatsoever, that
3 Dr. Hofeller used race predominantly, that he looked at any
4 data, that any knowledge he had was used to specifically
5 identify high BVAP precincts and put them all together.

6 **JUDGE WYNN:** See, what I'm going from --

7 **JUDGE EAGLES:** That's what he did.

8 **JUDGE WYNN:** -- is from a remedial perspective.

9 **MR. STRACH:** There is no evidence of that, Your
10 Honor.

11 **JUDGE EAGLES:** Well, you look at the maps. That's
12 what he did in some of these districts.

13 **MR. STRACH:** It happened in House District 101, and
14 they haven't even challenged that. Your Honor --

15 **JUDGE WYNN:** I want to direct you back to where I'm
16 going with this, and, that is, that your statement goes in
17 terms of what he did. This is not the first instance. This is
18 not the initial trial where we look and you say he didn't do
19 any of that. This is remedial, and in the remedial context,
20 where you have someone who did it and we found it to be a
21 constitutional violation, a legislated constitutional
22 violation, you know the general areas in which the
23 African-American population exists, does the mere fact that you
24 say we didn't do it mean and then draw something that
25 essentially looks a lot like what you had before?

1 Does that -- I shouldn't say mere fact because
2 there's the indication. I don't want to try to point one way
3 or the other on it, but that's the point I'm getting to here,
4 and, that is, do we view this from the perspective of giving
5 you a clean slate, or do we view it from the perspective that
6 this is a remedial order in which we've already found a
7 violation?

8 The question is how have you cured it, and in doing
9 so, to what extent -- or I simply ask: Are you saying they
10 just ignored what they already knew, that is, Dr. Hofeller and
11 the legislature ignored what they know and what is general
12 knowledge?

13 **MR. STRACH:** Your Honor, using general knowledge is
14 not against the law. They ignored the racial data, and they
15 did not purposely put high BVAP districts together.

16 What I would say, Your Honor, is that speculation to
17 the contrary is not evidence regardless of whether this is a
18 remedial phase or not. The Court is not able to speculate
19 about motives without actual evidence, and, of course, because
20 we're here on objections only, there's been no real litigation
21 over these maps. There have been no depositions. There's no
22 way to really test a lot of this.

23 **JUDGE EAGLES:** Well, your client could have come -- I
24 mean, you could have come in and offered some affidavits, which
25 you did not do.

1 **MR. STRACH:** We've offered the legislative record,
2 which is very extensive. It's over 2,000 pages. That's -- we
3 thought --

4 **JUDGE EAGLES:** But nobody is under oath in that.
5 Nobody is explaining how you drew these districts specifically
6 in response to their challenges, correct, to their objections?

7 **MR. STRACH:** Well, Your Honor, generally, the Courts
8 look at the legislative record, and the legislative record is
9 extensive. There is no reason to bring anybody else in. And,
10 in fact, it's our position that anything outside the
11 legislative record is not relevant anyway under the Supreme
12 Court precedent on this.

13 So the Court certainly has enough information in the
14 legislative record to know that any assertion that racial data
15 was used predominantly to draw these districts is simply just
16 rank speculation.

17 **JUDGE SCHROEDER:** How do you respond to the
18 Plaintiffs' argument that, well, the districts do have some
19 similarities? They would say striking similarities to the ones
20 that were struck down.

21 **MR. STRACH:** We would disagree with that. To the
22 extent there are similarities or anything that's irregular
23 about them, that's driven by the shape of the precincts
24 themselves. House District 21 is a great example. There is an
25 irregular shape as it comes down into Sampson County, but

1 that's because the whole precinct was selected; whereas,
2 before, that precinct might have been lopped off, it wasn't
3 this time.

4 In addition, when you look at the criterion as a
5 whole and you're drawing districts using political data to make
6 sure incumbents can have a chance at winning their election,
7 these are the districts that you come up with. This is what
8 you get.

9 What I would say is that the Plaintiffs here are now,
10 Your Honors, conflating the vote dilution with gerrymandering
11 and racial sorting. What the Plaintiffs want the General
12 Assembly to have done is looked at race on the front end in
13 order to prevent alleged vote dilution, but the General
14 Assembly concluded that there's not enough district-specific
15 evidence of legally sufficient racially polarized voting, and
16 none was submitted during the process. So they concluded we're
17 not going to look at race at all.

18 Now, as the Court knows from the legislative record,
19 once the districts were drawn, racial data was present, and the
20 legislature was able to look at that on the back end, and the
21 legislators themselves asked the question: Hey, do you have
22 any district-specific evidence that there's a racial issue,
23 there's a vote dilution issue in any of these districts? No
24 one come forward with any evidence. So the legislature kept
25 the districts the way they were.

1 So we believe that the legislature did exactly what
2 this Court would contemplate and certainly was contemplated in
3 its order, which is not allow race to predominate, but then
4 ensure on the back end that if you --

5 **JUDGE WYNN:** But help with that vote dilution.
6 That's -- I don't see that as being the issue we're dealing
7 with here.

8 **MR. STRACH:** It's not.

9 **JUDGE WYNN:** We're dealing with the issue of whether
10 this constitutional violation has been cured.

11 **MR. STRACH:** I agree.

12 **JUDGE WYNN:** And when you bring a map -- if you bring
13 a map -- let's say you brought us the same map, and you had
14 every argument you have right now. Does that -- I mean, how do
15 we ignore looking at what we see, and, that is, a district that
16 looks virtually like the one that we said was unconstitutional
17 and when you have the same map drawer, the same legislature,
18 and, yet, it looks the same?

19 **MR. STRACH:** Your Honor, I disagree. We didn't bring
20 the same map to you. We --

21 **JUDGE WYNN:** Well, I'm not saying the entire map, but
22 I'm saying the districts that are being challenged, at least
23 one or two of them that looked pretty close.

24 **MR. STRACH:** I disagree. I disagree. I strongly
25 disagree. These districts look a lot different than the way

1 they looked before, and it's very clear, just from looking at
2 the maps, that they follow whole precincts, they follow
3 municipal boundaries where those are applicable, they are more
4 compact, they follow traditional redistricting principles, and
5 they protect incumbents. They are drawn in such a way to make
6 sure that the incumbents can win an election.

7 That is what drove -- shapes those districts, and for
8 that reason alone, they all look different.

9 **JUDGE WYNN:** So when you say -- I'm not saying
10 they're drawn the same, but I want to make sure we're using the
11 same term. The core shape of the district is very close.

12 **MR. STRACH:** I wouldn't agree with that, Your Honor.
13 What happens --

14 **JUDGE WYNN:** For District 21.

15 **MR. STRACH:** 21 is vastly different. 21 --

16 **JUDGE WYNN:** But the core constituency there or the
17 core shape of it is pretty close.

18 **MR. STRACH:** There are a couple of towns that are
19 similar. You got Goldsboro and you got Clinton, but, beyond
20 that, that district looks completely different.

21 And, in fact, unlike before where cities were split,
22 precincts were split, none of that happened this time. All of
23 the indicia of racial gerrymandering that this Court found in
24 those prior maps is absent now. It's all gone. There are no
25 indicia of gerrymandering in these districts, and if this

1 Court -- if traditional redistricting principles mean anything,
2 what they mean is if you follow them, that negates the
3 circumstantial evidence in any way --

4 **JUDGE EAGLES:** How could you say that about the
5 Cumberland County Senate district where all -- most all of the
6 black voters have been placed in with Hoke County?

7 **MR. STRACH:** That's incorrect. Your Honor, if I may
8 put -- if this is still on, I'll put up the 2011 district.

9 Your Honor, so this has all of Hoke, and we put a
10 picture of this in our brief. This district goes, as I
11 mentioned, five fingers or more. It is not limited to
12 Fayetteville. It's not limited to any particular city. It
13 goes way out into the far edges.

14 Obviously, there are high BVAP precincts because that
15 was the theory on which that was drawn way out there, and the
16 district that is before this Court now is vastly different from
17 that. This district, I can't remember how many split VTDS it
18 had, but it had a bunch. There were a lot of split precincts.
19 It didn't follow any city lines. It was definitely not
20 compact. It was probably the least compact of the whole bunch
21 of them.

22 The district that you have before you now, if it
23 splits -- I don't think it splits any precincts, maybe one. I
24 can't remember off hand. It's certainly not as many as there.
25 It generally follows the Fayetteville city line. It was way

1 more compact than that district ever thought about being.

2 **JUDGE WYNN:** Doesn't it divide Fayetteville along
3 racial lines, the district as you've drawn it now?

4 **MR. STRACH:** It does not. If it divides Fayetteville
5 at all, it's based on clinical data to ensure that Senator
6 Clark would have a district he could win and Senator Meredith
7 would have a district he could win.

8 **JUDGE EAGLES:** But how do we know that?

9 **MR. STRACH:** Because that's what the evidence is.
10 That's what they testified -- that's what they said in the
11 legislative record that they did. There's no evidence to the
12 contrary of that. I don't know how we could prove a negative.

13 **JUDGE WYNN:** What is political data?

14 **MR. STRACH:** It's election results. There were -- in
15 the record, it was -- they talked about I believe -- I think it
16 was ten elections, sets of elections, that they looked at, and
17 when Dr. Hofeller was moving the things around the screen, as
18 the legislators said, he was looking at the past performance of
19 these precincts to ensure that, for instance, he wasn't going
20 to dump a precinct in Senator Clark's district that would
21 likely not vote for him in the next election, and the same for
22 Senator Meredith. That's what he was doing while --

23 **JUDGE WYNN:** Is there any correlation between the
24 political data and the racial population?

25 **MR. STRACH:** If there is any, it's not been proven.

1 I'm not aware of that.

2 **JUDGE WYNN:** And you don't think Dr. Hofeller was
3 aware of that from having drawn the maps previously considering
4 race and politics?

5 **MR. STRACH:** There is no evidence of that.

6 **JUDGE WYNN:** I'm not saying -- there certainly is
7 evidence that he knew about it in the first instance. He's the
8 same one that's drawing it now, and you're saying now there is
9 no evidence that he knows this, even though he knew it before;
10 is that what you're telling me?

11 **MR. STRACH:** Your Honor, I'm saying that speculation
12 does not equal evidence.

13 **JUDGE WYNN:** It's not speculation. I don't want to
14 be argumentative, but I want to make sure you -- I think we
15 agree that in the first instance, as you represented in here,
16 he did consider race. He considered this particular district
17 for, albeit, what was considered to be a legitimate purpose, to
18 satisfy the Voting Rights Act or whatever. It was found to be
19 unconstitutional and the political considerations, surely, it
20 was known in the first instance. So in drawing the second
21 maps, you now say he didn't know this?

22 **MR. STRACH:** Your Honor, I'm saying there is no
23 evidence that he used race to draw these districts or any
24 knowledge of race that he might have had. The only evidence
25 would be a general race consciousness, which the Supreme Court

1 has never said is enough to allow race to predominate. Other
2 than that, anything else is just sheer speculation.

3 **JUDGE WYNN:** Just one last question on that. Has the
4 Supreme Court, and I don't think it has, ever considered or
5 recognized the use of political data for incumbency protection
6 purposes in a legitimate remedial-action-type case?

7 **MR. STRACH:** Your Honor, I don't know in the specific
8 context of a remedial plan, but I do know the Supreme Court has
9 said over and over again that incumbency protection is
10 legitimate. In fact, the Supreme Court said in Alabama in
11 2015 --

12 **JUDGE WYNN:** But those are not -- that's not a
13 remedial-action-type case, as I recall. We're dealing with --
14 I'm talking about in a remedial action case where it's been
15 found to be unconstitutional, the use of race, to come back and
16 use political data for incumbency protection, the question is
17 is that -- and I don't think it has. I just want to make sure
18 you confirm what I don't think. If you know something, I want
19 to know it.

20 Has it ever said that's a legitimate use in a
21 remedial action?

22 **MR. STRACH:** It has said that incumbency protection
23 is a legitimate traditional redistricting criterion. I don't
24 know if it's ever said that in a remedial context, but I
25 believe that if this Court were to say that it's not just in

1 the remedial context, that would be unprecedented.

2 **JUDGE WYNN:** Well, the question then in a remedial
3 context is if you find it in the first instance that you
4 have -- and I'm not saying there are -- individuals elected on
5 an unconstitutional plan, to then come back and protect those
6 same individuals, that's a different question for the Supreme
7 Court to consider. I'm not saying which way they would go on
8 it, but that's not the same question from the first instance
9 where you're doing it under presumably maps that were
10 constitutional, people who were there, and then you have a new
11 one.

12 **MR. STRACH:** Well, Your Honor, the problem with that
13 is that the Supreme Court in this case would have no evidence
14 upon which to analyze that issue. There is no evidence
15 whatsoever that the racial composition of the 2011 districts is
16 what led anybody to be elected under those plans, none, none
17 whatsoever. There is speculation. There is assumption.

18 **JUDGE WYNN:** Of course, that was the whole purpose of
19 the suit. It wasn't just for whom was elected within those
20 districts. Well, let's make sure we don't -- we do disagree on
21 it before you shake your head.

22 I understand. Those in the specific districts, you
23 probably make a good point, but the purpose deals with the fact
24 that because you put certain individuals in the way you draw
25 them, they affect other districts, and it's those in the other

1 districts who may have benefited from this unconstitutional
2 action.

3 **MR. STRACH:** Your Honor --

4 **JUDGE WYNN:** We don't recognize that?

5 **MR. STRACH:** There is no evidence of that, none.

6 None was presented to this Court in this case. None has been
7 presented in the remedial phase. There is no evidence that the
8 legislators elected in those surrounding districts benefited
9 from the racial composition of the districts. We have no idea
10 why they were elected. Maybe they were elected because they
11 were a strong candidate. Maybe they spent a lot of money.
12 Maybe they had a weak candidate. We have no idea.

13 **JUDGE WYNN:** Again -- and I get your point on it, but
14 it almost seems -- I don't know. It just doesn't seem to
15 follow to me, that the purpose -- if it was found it was
16 unconstitutional to draw them in that manner and you use race,
17 basically, you use it an unconstitutional way, it necessarily
18 affected the districts surrounding it. Otherwise, you would
19 never touch those around it because you're saying it can be
20 done -- I don't follow that.

21 **MR. STRACH:** It affects the people in the surrounding
22 districts, but that doesn't necessarily mean it affects the
23 politics. We don't know that.

24 **JUDGE WYNN:** Oh, I'm not talking about the politics.
25 I'm talking about the election of individuals who are

1 incumbents. Politics won't be the same. I'm not going there,
2 but I'm saying those who are incumbents since it's the
3 incumbency protection in a remedial action context, and that's
4 -- I think that is somewhat different.

5 Do we agree that that could be at least -- maybe we
6 can go there. There could be a difference between a remedial
7 action and incumbency protection as opposed to one in the first
8 instance?

9 **MR. STRACH:** Your Honor, I don't know the answer to
10 that question. What I do know --

11 **JUDGE WYNN:** But you do know the Supreme Court has
12 not answered it?

13 **MR. STRACH:** I would say that the Supreme Court --

14 **JUDGE WYNN:** Which is the reason neither one of us
15 know; is that right?

16 **MR. STRACH:** I would say that the Supreme Court has
17 never said that a court could hold that against the legislature
18 where, otherwise, it would be okay. The Court has never said
19 that just because you're in a remedial process, that all of a
20 sudden incumbency protection becomes illegal. They've never
21 said that.

22 **JUDGE WYNN:** No, it did not, nor did it say that it
23 is legal.

24 **MR. STRACH:** But they have said that it is a
25 traditional redistricting criteria, so I feel more

1 comfortable --

2 **JUDGE WYNN:** I think we are agreeing, even though we
3 are going in a circle on this thing. I think we are kind of
4 getting there, and I know you want to present a position that
5 it's consistent with where you feel on this, but the fact of
6 the matter is there is no case that deals with incumbency
7 protection on political data in a remedial action case of this
8 type, and there are certainly differences. How it comes out
9 I'm not trying to call it, but I'm just saying there's no case
10 on that.

11 **MR. STRACH:** I'm not aware of a case either way.

12 **JUDGE WYNN:** I think we have finally reached it.

13 **MR. STRACH:** If I can just address just a few -- I
14 think we've actually probably addressed a good bit of it
15 already.

16 **JUDGE SCHROEDER:** Are you still on the four?

17 **MR. STRACH:** I was going to briefly touch on the
18 four, if the Court would like me to. I think in terms of the
19 Senate districts, you got Senate District 28. That's the one
20 in Greensboro. Again, our position is that it tracks the
21 Greensboro city line. If you look at the data that's in the
22 record, 92.03 percent of the district's population is in the
23 city of Greensboro. And unlike the 2011 district, which split
24 Greensboro and went on down into High Point also, which is what
25 the Plaintiffs' district does, in this case the only -- the

1 2017 district only goes down into High Point simply to pick up
2 the incumbent, Senator Robinson and whose precinct is in or
3 near High Point. Otherwise, the district limits itself to the
4 Greensboro area.

5 **JUDGE SCHROEDER:** Do you know the answer to my
6 question to Mr. Speas as to whether the Covington map covers
7 the same areas that the enacted map does?

8 **MR. STRACH:** Your Honor, I'll be honest, I have not
9 looked at a precinct-level map of the Covington map in that
10 district. Sorry for that. I have not looked at that.

11 I would certainly guess, based on the location in
12 that particular picture, that many of them, if not all of them,
13 are in there; but their district, instead of tracking the
14 Greensboro city line along the southern border, veers on down
15 into High Point. I think that's where probably the district
16 ends up differing.

17 In fact, in Covington Plaintiffs' version of this
18 district, only 43.25 percent of their district population is in
19 Greensboro compared to 90-some percent of the enacted plan.
20 And they have -- 33.5 percent of their district is in High
21 Point. So they have clearly split the two municipalities to a
22 much greater extent.

23 The BVAP fell significantly in Senate District 28
24 from 56.49 percent down to 50.52 percent, and the only thing
25 that the Plaintiffs and their legislative allies could do in

1 the legislative debate was pick a target, and the legislature,
2 I think quite rightly, did not want to pick a target whether on
3 a statewide basis or certainly on a district basis, and they
4 just refused to do that. I think that's what the law requires
5 them to do.

6 **JUDGE EAGLES:** Can I ask you about that without
7 disagreeing with you about that point?

8 **MR. STRACH:** Yes, ma'am.

9 **JUDGE EAGLES:** During the legislative discussion and
10 even in your brief, you seem and your clients seem to take the
11 position that it would have been illegal to consider race at
12 all, and that clearly -- at least as far as I know and
13 understand the Supreme Court precedent, that is not right. It
14 is not illegal to consider race so long as race does not
15 predominant. And, yet, your clients said it was during the
16 debate, and you seem to say that in your briefing.

17 So can you help me understand that?

18 **MR. STRACH:** Yes, Your Honor, I would be glad to.

19 Obviously, my clients aren't lawyers, not all of them
20 anyway. What they were saying was without a justification for
21 the use of race, you can't -- the legislators on the Democratic
22 side were saying we think you should draw a 45 percent target.
23 What the other side was saying was without district-specific
24 evidence of legally sufficient racially polarized voting that
25 would justify you picking a target, we think that's overusing

1 race, and we're not going to do it.

2 **JUDGE EAGLES:** But that's not what they said. What
3 they said was it is illegal for us to consider race. And you
4 repeat that argument in your brief, as I understand your brief.
5 So are you saying that I have misunderstood your brief?

6 **MR. STRACH:** Your Honor, what we say is you cannot
7 use race -- unless you have the *Gingles* factors that are
8 justifying it as a VRA district, you cannot pick a target to --
9 which is what they were being asked to do. You cannot pick a
10 racial target.

11 **JUDGE EAGLES:** Okay. I understand that argument, but
12 that's not what you said in your brief and what they said on
13 the House floor. They said, and I understood you to say this
14 in your brief, you can't consider race. And that's just not
15 right. I mean, do you agree with me? In fact, you have
16 already agreed with me by saying race consciousness is not
17 illegal. So to the extent one might read your brief as saying
18 it's illegal to consider race at all, you agree that that's not
19 correct, or do you not?

20 **MR. STRACH:** Your Honor, that's a tough question to
21 answer because it depends on how you're using race. Again,
22 race consciousness, generally knowing the racial makeup of a
23 particular area in the state, is one thing, but when you say
24 I'm going to draw this at a particular level and you're, like,
25 negotiating it, what's the --

1 **JUDGE EAGLES:** I explicitly excluded that from my
2 question.

3 **MR. STRACH:** If it's general race consciousness, Your
4 Honor, that's not illegal.

5 **JUDGE SCHROEDER:** Well, Senator Blue had made the
6 point that -- and he asked that one of his districts be redrawn
7 because there were communities of interest, he said, and the
8 African-American community that were not included, and that
9 issue came up at that point in time, as I recall, in the
10 legislative discussion about whether that would be an
11 inappropriate consideration of race. And my recollection is
12 that the legislature approved his request, his amendment.

13 **MR. STRACH:** They did, because he represented it as a
14 particular community of interest that wasn't recognized in the
15 existing plan. He said I know that community of interest. So
16 they went with it. He was not asking them to adopt a racial
17 target.

18 **JUDGE SCHROEDER:** Is that consideration of race?

19 **MR. STRACH:** I believe that would be race
20 consciousness at best.

21 So then if we look at -- I think we've talked about
22 Senate District 21. We've laid out in our brief I think the
23 reason why we don't think that's a gerrymander, just visually,
24 I think, but it follows traditional redistricting criteria.

25 I will say this about it. There's this argument

1 that's made that, well, the county grouping itself is
2 36.86 percent BVAP.

3 **JUDGE EAGLES:** Which district? I'm sorry.

4 **MR. STRACH:** This is Senate District 21, the
5 Hoke-Cumberland Senate district.

6 The argument is made, well, the BVAP for that county
7 grouping is 36.86 percent, and so there's at least an
8 implication that anything above that is a gerrymander, but what
9 I would point out is that the Plaintiffs' BVAP of that Senate
10 District 21 is 41.03 percent. So if exceeding 36.86 percent is
11 evidence of a gerrymander, then the Plaintiffs have drawn a
12 gerrymander, too. We obviously don't think that that is the
13 rule.

14 **JUDGE EAGLES:** Did the Plaintiffs argue that if you
15 exceed 36 percent, it's a racial gerrymander? I didn't hear
16 that argument.

17 **MR. STRACH:** They certainly implied it, that because
18 we had exceeded the grouping BVAP, that that was evidence that
19 it was a gerrymander. So I'm simply pointing out that to the
20 extent that that was their argument, theirs is a gerrymander.

21 Just -- I will just briefly address this analysis of
22 Cumberland County that Dr. Herschlag did, only to say I think
23 it's true that it's not reliable because it shows potential
24 issues allegedly in Mecklenburg; yet, no districts are
25 challenged there, but the criteria that Dr. Herschlag used is

1 not apples-to-apples criteria that the legislature used.

2 **JUDGE EAGLES:** He didn't use municipal boundaries;
3 right?

4 **MR. STRACH:** He didn't. He didn't use -- the way I
5 read his report, it looked to me like he was focused only on
6 Cumberland, and he didn't use the Hoke-Cumberland grouping. At
7 least if he did, I can't tell that, which would not follow the
8 Whole County Provision correctly. He did not use Reock for
9 compactness, which the legislature did use. He only used
10 Pilsbury-Popper. It's not clear what he did with precincts. He
11 didn't look at municipal boundaries, and, of course, he didn't
12 look at incumbency protections. So his analysis is simply, we
13 believe, just unhelpful to the Court because it's an
14 apples-to-oranges comparison.

15 Again, House District 57, that's the district in
16 Guilford. It's anchored in east Greensboro. It's certainly a
17 compact district. Greensboro makes up 96.87 percent of the
18 district. So it's clear the legislature was trying to follow
19 the municipal lines.

20 The Plaintiffs have complained that Irving Park was
21 removed. The incumbent in that district never brought that up.
22 Like Senator Blue, if the incumbent or anyone else had said,
23 hey, I have an amendment here to move this community of
24 interest into this district, I'm sure they would have looked at
25 that. Nobody did that.

1 **JUDGE EAGLES:** Can I ask you a question about that
2 sort of generally, not specifically?

3 **MR. STRACH:** Yes.

4 **JUDGE EAGLES:** Do you agree that the legislature has
5 an independent duty to comply with federal and state
6 constitutional requirements when it redistricts?

7 **MR. STRACH:** Of course.

8 **JUDGE EAGLES:** Okay. So the fact that somebody may
9 not have pointed out a violation does not relieve the
10 legislature of complying with their own independent duty to
11 comply with the constitution? I may have --

12 **MR. STRACH:** I'm not sure I understand that question.

13 **JUDGE EAGLES:** Okay. You seem to say that unless
14 somebody points out a violation to the legislature, the
15 legislature is entitled to do whatever it wants to. It doesn't
16 have to comply with the law unless some random person or group
17 comes to the legislature and says, oh, you're about to violate
18 the constitution. You're not actually saying that; right?

19 **MR. STRACH:** No, Your Honor.

20 **JUDGE EAGLES:** You agree that the legislature has its
21 own duty to comply with the federal constitution and the state
22 constitution?

23 **MR. STRACH:** Sure.

24 **JUDGE EAGLES:** Okay. Because some of your --

25 **MR. STRACH:** This is a different issue, though.

1 **JUDGE EAGLES:** Yeah, but some of your arguments about
2 nobody told us we were doing it wrong seemed to imply that
3 somebody has to tell you that you're doing it wrong before you
4 can be held responsible for doing it wrong.

5 **MR. STRACH:** Yeah, I disagree with that overall
6 characterization of our argument.

7 **JUDGE EAGLES:** Good.

8 **MR. STRACH:** I would be happy to talk about any
9 specific argument we've made like that, but I don't --

10 **JUDGE EAGLES:** As long as that's not your argument,
11 then I'm happy to go forward.

12 **MR. STRACH:** Okay.

13 The other problem with the Plaintiffs' version of
14 this map that it was -- it would have double-bunked an
15 incumbent, and it's already been discussed the amount of
16 double-bunking that was in the Plaintiffs' map versus the
17 legislature's maps. Frankly, all of the double-bunking and the
18 political impacts in the Plaintiffs' map made it very difficult
19 to take those maps seriously, unfortunately, but the
20 legislature was obviously not going to ignore its criteria on
21 incumbency protection in that manner. So that was another
22 problem with that.

23 House District 21, the one down in Wayne and Sampson,
24 again, to the extent that that's got an irregular shape, it's
25 because that's the shape of precincts and --

1 **JUDGE EAGLES:** But the legislature is the one that
2 chose the precincts to go in that district as opposed to other
3 precincts.

4 **MR. STRACH:** That's right. And what it was doing --

5 **JUDGE EAGLES:** So, I mean, that just kind of begs the
6 question, doesn't it?

7 **MR. STRACH:** No, I disagree with that. What the
8 legislature was doing was the incumbent, Larry Bell, lived down
9 in -- I think it's on the Sampson County side right around
10 here. So they were going down using whole precincts to make
11 sure he was in that district.

12 **JUDGE EAGLES:** Do you dispute that he said he was
13 going to retire?

14 **MR. STRACH:** I'm not aware of that, and he certainly
15 didn't say anything about that during the legislative process.
16 That certainly would have been the time to stand up and say,
17 hey, guys, I'm resigning. That was not said, to my knowledge.

18 So, again, it's more compact. It follows traditional
19 redistricting principles. It follows municipal boundaries.
20 It's got Goldsboro and Clinton, and so that -- those are the
21 explanations for that district, certainly not race.

22 And then just briefly --

23 **JUDGE SCHROEDER:** Tell me one more time. Why does it
24 go down through Sampson County like that?

25 **MR. STRACH:** To pick up the incumbent's precinct.

1 The version we attached in our brief, I believe, Your Honor --

2 **JUDGE SCHROEDER:** In order to be contiguous and in
3 order to reach his precinct?

4 **MR. STRACH:** That's right. That's right. I believe
5 if you look at the version we attached, it shows that his
6 residence is way down at the bottom of the district, and so it
7 had to go down there to pick him up.

8 **JUDGE SCHROEDER:** He's around down by Clinton, I
9 think.

10 **MR. STRACH:** Below Clinton even, I think, if I'm
11 recalling correctly. So that's what -- that explains that
12 particular drawing.

13 Just briefly on some of the state constitutional
14 issues that have been raised, the mid-decade redistricting, the
15 one thing that hasn't been discussed about that is the fact
16 that regardless of what the scope of authority of the
17 legislature was, per this Court's order, there's this
18 additional issue of what standard would the Court -- this Court
19 or any other Court apply to North Carolina's mid-decade
20 redistricting provision in the state constitution?

21 There's just no precedent under North Carolina law
22 explaining how that would apply in a Court-ordered
23 redistricting process.

24 There's certainly no precedent for this rule that you
25 can't -- you have to freeze districts into place. Whatever the

1 merits of that would be regardless, there's just no law in
2 North Carolina on is that how you would apply that prohibition.

3 **JUDGE EAGLES:** Can you I ask you about that? I mean,
4 I hear what you're saying. In fact, I think I quizzed
5 Plaintiffs' counsel about that one, but to follow up on a
6 question one of my colleagues asked, if the legislature had
7 come back in response to our order and said, oh, hey, this is
8 totally different policy now in light of this change, so we're
9 going to redistrict over in Cherokee County, we're going to
10 redistrict over in wherever, places very far away, do you think
11 that would have been okay?

12 **MR. STRACH:** Well, luckily, Your Honor, we don't have
13 that issue because the legislature didn't do it. So I just
14 point that out.

15 But, number two, Your Honor, all the county groupings
16 didn't have to change. So I think the legislature wisely acted
17 judiciously and with restraint in not going into those other
18 county groupings. I think that was the right decision, but I
19 don't know if that's how a North Carolina court would interpret
20 the mid-decade redistricting in the context of remedial
21 redistricting. I have no idea. There's simply no law on that.

22 **JUDGE WYNN:** But aren't we in a better position to do
23 that?

24 Essentially, here's how I see this works out. North
25 Carolina Constitution, which is sovereign, says we, unlike

1 other states, most other states that I know of, would not allow
2 you to do mid-decade redistricting unless a federal court
3 authorizes it to be done. We issued an order, and it's our
4 order that tells you what to do.

5 Aren't we in a better position to say what our order
6 says than a state court that would come in and have to
7 interpret our order to determine, well, didn't the federal
8 court authorize this to be done?

9 **MR. STRACH:** The federal court cannot use its order
10 to mandate a particular interpretation of the North Carolina
11 Constitution.

12 **JUDGE WYNN:** No, no, no, that's not where I'm going.
13 The constitution itself says there may not be mid-decade
14 redistricting except to the extent there's a federal order that
15 would authorize it. Do you disagree with that?

16 **MR. STRACH:** Well, in effect, yes, but that's not
17 what the constitution says.

18 **JUDGE WYNN:** It doesn't say that, but that's
19 certainly what the interpretation has to be. Under federal
20 law, that has to be the interpretation. If a federal court
21 comes back and says under the federal constitution, you
22 violated, which is supreme to the state constitution, this part
23 needs to be fixed, that sets aside the extent that you must
24 follow that law, that authorizes you to then redo it.

25 What it doesn't do is it doesn't say -- it doesn't

1 authorize -- in other words, we don't have that much authority.
2 We can't come in and say here's a segment here that violates
3 the federal constitution. Now, therefore, unless our order
4 says it, and you have to have some basis, you can go ahead and
5 redistrict these other areas here because the state
6 constitution so limits you. You disagree?

7 **MR. STRACH:** Well, Your Honor, maybe we, again, are
8 having a conversation on two different --

9 **JUDGE WYNN:** Well, let's get on the same page, and we
10 can go step by step, if you'd like. The first thing that I
11 want us to agree on is that there is a state constitutional
12 provision that prohibits mid-decade redistricting. We agree on
13 that, don't we?

14 **MR. STRACH:** It does in general. It has not been --

15 **JUDGE WYNN:** And what does the "in general" have to
16 do with it?

17 **MR. STRACH:** Because there's no standard under state
18 law for how that would operate in the context of --

19 **JUDGE WYNN:** But you just can't go and do it without
20 something else. In other words, you couldn't have just all of
21 a sudden, without even us giving an order, saying we're going
22 to go ahead and redistrict just because we want to.

23 **MR. STRACH:** Sure.

24 **JUDGE WYNN:** So there is no mid-decade prohibition?

25 **MR. STRACH:** No, I said you're correct.

1 **JUDGE WYNN:** Okay. So it's our order we're talking
2 about through which any authorization that the State would have
3 to be able to redistrict it -- it must arise under our order
4 because without it, you just said you can't do it.

5 **MR. STRACH:** No, the order is what would trigger the
6 State's ability to do it, but this Court --

7 **JUDGE WYNN:** Well, that's -- you see that's how --
8 trigger does not mean it's a starting line for you to now run
9 the entire race. It's authorized you to do it to cure a
10 constitutional defect that we author -- it doesn't give us the
11 authority to tell the State of North Carolina, you can go now
12 and redistricting to -- redistrict like you want to. It
13 only -- we've only authorized you what we could do, and that is
14 to say, that part that violates the federal constitution; and
15 when it comes to you, then it comes to you, and can we, in
16 those instances, know correctly without offending the state
17 constitution.

18 **MR. STRACH:** Your Honor, I think this Court is a
19 court of limited jurisdiction, and I don't think this Court can
20 use its order as a way to force the legislature into a
21 particular interpretation --

22 **JUDGE WYNN:** See that's where I think we're at a
23 crossroads. We're not forcing the legislature to do anything.
24 We've only looked at a part of it and said that part that you
25 did was unconstitutional. We didn't force you to do it. We

1 said, go fix that. What we -- and the limitedness, I agree.
2 What we can't do is to then say, well, we are now going to give
3 you a trigger to run across the whole map and draw it like you
4 want to in violation of the state constitution.

5 **MR. STRACH:** Your Honor, when the Court says in its
6 order you've got to fix these districts, that necessarily
7 obviously entails some changing of other districts.

8 **JUDGE WYNN:** That's the question.

9 **MR. STRACH:** That's the question.

10 **JUDGE WYNN:** And if you show that you necessarily had
11 to change those districts to cure the violation, I think you
12 may prevail; but if it can be shown that you didn't have to do
13 it, that it could have been done without doing it, I think
14 there's a problem.

15 **MR. STRACH:** Your Honor, I wouldn't necessarily agree
16 with that, but the issue in this case is the Plaintiffs have
17 proposed a particular --

18 **JUDGE WYNN:** We didn't disagree on the fact that you
19 used the word "necessarily." We agree that if you necessarily
20 have to do it, then it would be okay.

21 **MR. STRACH:** I don't know if that's the standard or
22 not. There's no case on that.

23 **JUDGE WYNN:** I was using your word.

24 **MR. STRACH:** I'm not purporting to give a standard.
25 I don't know what the standard is. I think it would be error

1 for this Court to supply --

2 **JUDGE WYNN:** I'll leave it there, but I want to make
3 sure we're back on the initial premise, and, that is, you
4 cannot make the change without there being something
5 intervening that allows you to do it.

6 **MR. STRACH:** Something has to trigger it. I prefer
7 the word "trigger." I apologize.

8 **JUDGE EAGLES:** Can you hold on just one second and
9 let the three of us confer about scheduling briefly?

10 **MR. STRACH:** Yes.

11 (Pause in the proceedings.)

12 **JUDGE EAGLES:** I know we kept asking you questions,
13 but in terms of your presentation, how much longer do you
14 think?

15 **MR. STRACH:** I really just was going to cover the two
16 final state law issues, which are very brief. So 5 minutes,
17 unless you have more questions.

18 **JUDGE EAGLES:** And then what are you all anticipating
19 on your rebuttal?

20 **MS. EARLS:** Also 5 minutes.

21 **JUDGE EAGLES:** All right. So I don't actually
22 believe anybody about that because we're going to have
23 questions. We'll be in recess until 2:00.

24 (The court recessed at 1:06 p.m.)

25 (The court was called back to order at 2:07 p.m.)

1 **JUDGE EAGLES:** All right. I think we were hearing
2 from the Legislative Defendants. So, Mr. Strach, you may
3 proceed.

4 **MR. STRACH:** Thank you, Your Honor.

5 One of the things before I move to the next topic, I
6 had a little time to think about a question, Judge Wynn, that
7 you asked along the lines of has the Supreme Court ever dealt
8 with a situation with incumbency protection in the context of a
9 remedial map. And I didn't think of this case earlier, but I
10 believe that the *Cromartie* case is pretty close to dealing with
11 that situation because the original district was drawn; it was
12 judged to be a racial gerrymander. The State came back and
13 redrew it in a remedial process, and they drew it so it would
14 be a safe Democratic district to protect the incumbent. The
15 Supreme Court ultimately signed off on that strategy. So I do
16 believe we do have some case law approving the use of that
17 criteria in this context.

18 **JUDGE WYNN:** Thank you.

19 **MR. STRACH:** Thank you.

20 I think the next topic on my list that I had here,
21 Your Honors, was this traversal rule. The Plaintiffs rely on
22 the *Pender County* case. We think that the *Stephenson* line of
23 cases are pretty clear that what matters under the state
24 constitution is the number of traversals.

25 In the *Pender County* case, you only had a two-county

1 grouping. So by nature of having a two-county grouping, the
2 traversal rule is going to mandate that you keep one county --
3 the smaller county whole and then traverse the other county
4 only once. That's inherent in the nature of a two-county
5 grouping.

6 The groupings that are at issue here are multi-county
7 groups, six-, seven- county groupings. We would actually
8 disagree -- we actually believe that, for instance, in the
9 grouping that includes Richmond, Montgomery, Stanly, Cabarrus
10 Rowan, and Davie, we count five traversals in the enacted map
11 and six traversals in the Covington Plaintiffs' map. The sixth
12 traversal that we count is from Stanly to Rowan County.

13 So we might have disagreement there on the number of
14 traversals, but we think that, in any event, what the state
15 constitution requires is that you minimize the traversals, and
16 that's exactly the way that the legislature did it, and so we
17 believe that it clearly complies --

18 **JUDGE SCHROEDER:** Can you count them for me? How is
19 it we can't count the same?

20 **MR. STRACH:** I have --

21 **JUDGE SCHROEDER:** I mean, "we," being the Plaintiffs
22 and the Defendants.

23 **MR. STRACH:** Right. I have -- in the Covington map,
24 I've got the traversal of Richmond to Montgomery.

25 **JUDGE EAGLES:** Well, they use the whole county,

1 though, of Richmond and the whole county of Montgomery; right?

2 **MR. STRACH:** There is a traversal from -- the
3 district traverses from Richmond into Montgomery.

4 **JUDGE SCHROEDER:** So when you cross the county line,
5 that's one traversal?

6 **MR. STRACH:** That's a traversal.

7 **JUDGE EAGLES:** Even if you've got the whole counties?

8 **MR. STRACH:** That's right.

9 **JUDGE EAGLES:** Okay.

10 **MR. STRACH:** So you've got Richmond to Montgomery,
11 Montgomery into Stanly, you've got Stanly into Cabarrus, you've
12 got Stanly going into Rowan, you've got Cabarrus going into
13 Rowan, and you've got Rowan going into Davie. So that's how we
14 count those.

15 **JUDGE SCHROEDER:** So District 67 has two
16 traversals -- three?

17 **MR. STRACH:** 67 traverses into Rowan and into
18 Cabarrus.

19 **JUDGE EAGLES:** Under the Covington plan?

20 **MR. STRACH:** Yes.

21 **JUDGE EAGLES:** And yours, the enacted plan, 2017
22 Plan, also has five?

23 **MR. STRACH:** That was six that I just counted, and
24 the enacted plan has five. So we may have a disagreement about
25 the way we count traversals. We believe that we --

1 **JUDGE SCHROEDER:** Okay. I thought Ms. Earls may have
2 said that there was some other issue other than the traversals
3 that they were really pointing in? What was that?

4 **MR. STRACH:** Well, they're focusing on -- our
5 position is that you have to minimize the number of traversals.
6 They believe that based on the *Pender County* case, you have to
7 keep -- you have to start over on one side of the district to
8 keep a district whole and then proceed into another district,
9 and so we just disagreed with that.

10 That is true in a two-county grouping because keeping
11 the smaller county whole, by definition, will minimize the
12 number of traversals in that grouping. That rule has never
13 been held to apply on a six- or seven-county grouping.
14 Frankly, the state courts have never ruled on that issue.

15 **JUDGE SCHROEDER:** Is there some philosophical reason
16 that it wouldn't apply or some reason?

17 **MR. STRACH:** Because it often -- when you do that, it
18 often creates another traversal in a bigger county grouping, as
19 we contend it did in the Plaintiffs' map. So what the
20 legislature did is minimize the traversals. That's what we
21 believe the rule is.

22 **JUDGE SCHROEDER:** Okay. I follow you.

23 **MR. STRACH:** And then, finally, on the compactness,
24 we think *Dickson* is pretty clear that there is no state
25 constitutional standard on compactness. Voluntarily, the

1 legislature did adopt the compactness standard as a guide,
2 which was, in my estimation, the first time the legislature in
3 North Carolina had ever done that before.

4 And the district that the Plaintiffs are complaining
5 about being noncompact, we put a side-by-side of the enacted
6 district next to the district as it existed in 2002, and they
7 looked very much the same; and so if the superior court in
8 2002, which allegedly adopted this compactness standard, let
9 that district go by, and clearly the enacted district looks
10 almost identical to it, our contention is that that argument is
11 without merit.

12 That's all I have, unless there's other questions.

13 **JUDGE SCHROEDER:** So to go back to the issue of
14 whether the legislature was authorized to address districts
15 that were not contiguous to or were found to be
16 unconstitutional, the answer given by the legislators in the
17 transcripts, I think, was that they needed do that to cure the,
18 quote, core constitutional violation; is that right?

19 **MR. STRACH:** No, what they were -- I believe what
20 they said was that if you froze the districts around, it would
21 go to kind of what Judge Eagles had mentioned earlier, which is
22 it kind of forces you to start curing the gerrymander with the
23 old gerrymander, but what they said was there's a ripple effect
24 inside these counties. And so to cure the indicia of
25 gerrymandering, like split precincts and splitting towns and

1 things like that, you have to be able to go in and unsplit
2 precincts, put towns back together.

3 And so when you do that in one district in, say Wake
4 back, the districts are all so close to each other, that
5 creates a natural ripple effect throughout the map.

6 **JUDGE SCHROEDER:** Okay. What's the record evidence
7 that that's the reason? Other than they said that they needed
8 to do that, is there any evidence that if we were to look at
9 split precincts, et cetera, and determine that those have been
10 corrected, that that necessarily required the legislature to
11 reach out to the other districts?

12 **MR. STRACH:** Your Honor, that's a hard -- I would
13 just say look at the Wake County map, the map that was enacted,
14 which I think it's notable that it has not been challenged by
15 the Plaintiffs other than on this mid-decade rule, but the
16 alleged gerrymander districts in Wake County have not been
17 challenged.

18 The Plaintiffs apparently believe that those
19 gerrymanders were cured or fixed. Well, part of the reason
20 they were cured or fixed, we would contend, is because the
21 legislature went through Wake County in both maps and unsplit a
22 bunch of precincts. If you look at the prior map and put it
23 next to the new map, many, many precincts were unsplit or kept
24 whole and towns lines were respected more in the new map.

25 So we think visually --

1 **JUDGE SCHROEDER:** But why would that require the
2 legislature to change a district that's at the far corner of
3 the county, for example, that was not contiguous to any of
4 these?

5 **MR. STRACH:** Well, it --

6 **JUDGE SCHROEDER:** Because I'm assuming those already
7 had, quote, cured any indicia of gerrymandering because they
8 followed the regular precincts, et cetera.

9 **MR. STRACH:** They didn't. A lot of the other
10 districts in Wake County, even that were not challenged, had
11 split a lot of precincts, and that was one of the things that
12 was part of the problem from an overall-map perspective. It
13 was certainly noted how many precincts were split overall in
14 the whole map.

15 If you are looking at Wake County, for instance, and
16 you've been told that the number of split precincts and not
17 following traditional criteria was a problem, then what they
18 decided to do was go in and make sure that that couldn't be a
19 problem the second time around. In changing all the districts,
20 they went in and made sure that the new plan had a lot less
21 split precincts, and it does, and that, otherwise, followed
22 traditional criteria better.

23 I would also point out that we attached to our brief
24 a precinct-level map of the 2011 districts. As the Court can
25 tell just from eyeballing that map, many of these districts are

1 not in the, quote, far corners. They're often just one
2 precinct away from a challenged district or maybe a couple of
3 precincts away.

4 So to try to say the legislature -- you're completely
5 hemmed in. It would greatly limit their ability to cure the
6 prior gerrymanders because of -- with such a rule.

7 **JUDGE EAGLES:** Well, doesn't the incumbency
8 protection also, what did you just say, completely hem them in
9 in terms of curing the constitutional defect? Because you just
10 explained to us earlier, when you were talking about Wayne
11 County and Sampson County, oh, well, we had to go down there to
12 protect the incumbent, and as a result, therefore, we have all
13 of these majority-BVAP precincts. That may not be exactly
14 right.

15 **MR. STRACH:** Right.

16 **JUDGE EAGLES:** But -- so doesn't the incumbency
17 protection do exactly what you just said that you were trying
18 to avoid doing because it would cause a problem?

19 **MR. STRACH:** No, no. In fact, the incumbency
20 protection helped by going in and unsplitting a lot of those
21 precincts. The legislature was still able to draw a district
22 for each incumbent in Wake County, and that's what they did,
23 and they were able to look at the political data to make sure
24 that those were districts that each one of those incumbents
25 could win, whether they were Republican or Democrat. So, no,

1 ensuring that each incumbent was in a district that they could
2 win did not limit the General Assembly's ability to draw those
3 districts.

4 **JUDGE EAGLES:** But did it not limit the General
5 Assembly's ability down in Wayne and Sampson County, the
6 incumbency protection, in the same kind of way that you're
7 saying -- in other words, it seems inconsistent to me. You're
8 saying we get to protect incumbents, these people who were
9 elected in unconstitutional districts, and as a result here, we
10 get to draw districts full of majority-BVAP precincts, but over
11 here, oh, well, we couldn't do that because, in a different
12 kind of context, we have to modify these other precincts that
13 aren't contiguous -- these other districts that aren't
14 contiguous in order to avoid this alleged claim that we might
15 be facing about sticking with the core districts. It seems
16 inconsistent to me. Maybe I'm not saying that correctly.

17 **MR. STRACH:** Your Honor, I apologize. I don't think
18 I understand the question. I'm not following.

19 **JUDGE EAGLES:** If you start your redistricting
20 process by protecting the core of the unconstitutional
21 districts, whether you do that by refusing to go beyond a
22 contiguous district or whether you do that by protecting an
23 incumbent, aren't you -- don't you have the same problem? In
24 other words, you and the plaintiff are both, in my mind, taking
25 inconsistent positions on this. It seems like when you protect

1 incumbents, you are doing the same thing as when you say, oh,
2 we can't go beyond a contiguous district.

3 And I must not still be saying it very clearly
4 because you're frowning.

5 **MR. STRACH:** I'm sorry. When you go through a county
6 like Wake County, you can protect incumbents and make sure
7 they're all in separate districts; but when you go through and
8 you start unsplitting precincts that had been split before,
9 that creates ripple effects in the map. That's really the best
10 way I know how to explain it.

11 **JUDGE EAGLES:** I'm not disagreeing with you about
12 Wake County. I am talking about the implications of your
13 argument in other districts such as Wayne and the Wayne-Sampson
14 district.

15 **MR. STRACH:** Well, that's not one that's alleged to
16 have been done in mid-decade. That's one that everyone
17 concedes was proper to redraw.

18 **JUDGE EAGLES:** Well, yeah, but you have to apply the
19 same rules.

20 **MR. STRACH:** And we did.

21 **JUDGE EAGLES:** I don't know about that. You're
22 saying we're allowed to go beyond the core in Wake County, and,
23 yet, you're trying to justify your district in Wayne and
24 Sampson, sticking with the high BVAP precincts.

25 **MR. STRACH:** Well, I would point out in that

1 district, if you look at the map, it does not include all the
2 high BVAP precincts. There are lots of those around that
3 district that are not included in the district. So that's the
4 first point.

5 But, number two, to the extent it does come down and
6 pick up any precincts like that in Sampson County, it's because
7 it had to go pick up the incumbent's address.

8 **JUDGE EAGLES:** Right, you're sticking with the core
9 of the unconstitutional district, which you're saying, oh, but
10 we can't do that in Wake County; we can't stick with the core
11 because that would cause problems, but we can stick with the
12 core via the incumbency protection in Wayne and Sampson.

13 **MR. STRACH:** They are just two totally different
14 situations, in my mind, because one they're arguing is subject
15 to this mid-decade rule; the other is not. I think to me they
16 are apples and oranges.

17 **JUDGE WYNN:** The key to your argument for Wake County
18 is that it was necessary to do this, to go outside of the core
19 area required for the constitutional correction. You had to do
20 this because of other considerations.

21 **MR. STRACH:** Your Honor, I don't know what the
22 standard is for necessary.

23 **JUDGE WYNN:** I want to know what standard you used
24 and why you chose to do it. Why did you go into those outside
25 areas? I thought I was simply repeating what you said, and,

1 that is, that it was necessary to do so; you had to do it.

2 **MR. STRACH:** Well, if I said "necessary," maybe I
3 misspoke. I don't remember that.

4 **JUDGE WYNN:** Why did you do it then?

5 **MR. STRACH:** Well, as I stated, there is a ripple
6 effect, and the idea was to unsplit other precincts in other
7 districts to ensure that no argument would be made that in Wake
8 County, as a whole, there are so many split precincts that you
9 gerrymandered all over again.

10 So there was --

11 **JUDGE WYNN:** So was the end result that you had to do
12 it? Was it necessary for you to do it? In other words, in
13 order to cure the constitutional defect here or the problem,
14 did you have to do it?

15 **MR. STRACH:** I think it's arguable that it did have
16 to be done to ensure --

17 **JUDGE WYNN:** If you had to it and if you could have
18 done it another way, what would give you the authority to do
19 it?

20 **MR. STRACH:** Well, this is all I know. All I know is
21 that we did it the way we did it, and they've not challenged it
22 as a gerrymander. So we must have done something right.

23 **JUDGE WYNN:** Let me make sure I phrase this right
24 because I want to -- this is where we get back into the state
25 constitutional argument.

1 We, as a Court, cannot tell anyone to do something
2 that's in violation of the state constitution unless we have a
3 basis for doing so, and here the basis is there is a core
4 violation of the constitution, a federal constitution
5 violation; and, therefore, you go back and correct that, which
6 gives you authority to do so. So that's very limited authority
7 because we are limited as a federal court.

8 For you to go outside and violate the state
9 constitution, you're going to have to be able to say we have
10 authority under this federal order to do so because we have to
11 split precincts. We got to do all kinds of stuff. In other
12 words, we have to. That's acceptable. If you simply do it
13 because it is a good policy or something you'd like to, I don't
14 think we have the authority to give you that authorization.

15 **MR. STRACH:** Your Honor, I disagree with the premise
16 of your question.

17 **JUDGE WYNN:** Well, then give me this. You think we
18 can tell -- we can disregard the part of the state constitution
19 and say there was a core violation of the constitution here, go
20 back and fix it, and, oh, by the way, fix the districts around
21 it even if it's not necessary?

22 **MR. STRACH:** Your Honor, again --

23 **JUDGE WYNN:** Do we have that authority?

24 **MR. STRACH:** I disagree with the premise.

25 **JUDGE WYNN:** But do you disagree; do we have that

1 authority from your perspective?

2 **MR. STRACH:** You have the authority to say fix the
3 unconstitutional districts. Whether that has resulted in a
4 violation of the state constitution is unknown, and we contend
5 this Court does not have the authority to try to make that
6 determination.

7 **JUDGE WYNN:** Well, we got that earlier, and we
8 started with the basic premise that we start out with is that
9 you can't change those districts unless you have an order from
10 this Court or something that allows you to do it, and the basis
11 for the change arises from our order; and because we are a
12 court, as you said, of limited jurisdiction, which means we're
13 not going to impose federal on the state, the state
14 constitution continues to control. So only to the extent very
15 specifically do we say cure the violation does the authority
16 arise. Otherwise, you've given us a lot of power. You're
17 saying once we say there's a violation, then the General
18 Assembly has the authority -- has -- takes it, okay, you have
19 now given us a license to cure it any way we want to cure it,
20 which includes violating the state constitution, even if it's
21 not necessary.

22 **MR. STRACH:** Your Honor, what I would say is that,
23 again, your premise is that it would be a violation of the
24 state constitution if it wasn't, quote, necessary to control
25 that. That is an unknown question. The state courts have

1 never ruled on that question.

2 So I believe that the premise of the question assumes
3 a violation of the state constitution. That may or may not be
4 true. It would depend on what the state courts would say about
5 that. That's our position.

6 **JUDGE WYNN:** Okay. Thank you.

7 **JUDGE SCHROEDER:** Is there anything in the record
8 that I could look at to understand where district lines were
9 changed, for example, in Wake County along the lines of what
10 you said were necessary to do?

11 **MR. STRACH:** Well, again, I don't know if I agree
12 with the necessary standard, but certainly --

13 **JUDGE SCHROEDER:** To support justification given by
14 the Defendants for redrawing them.

15 **MR. STRACH:** I think that the Court could look at the
16 precinct-level maps from 2011 in, say, Wake County, and the
17 Court could see how those precincts were now made whole
18 precincts in most of the county, and the Court could also look
19 at the 2011 map precinct-level data that we attached to our
20 brief and could see how close many of those precincts were to
21 allegedly untouchable districts, and I think the Court could
22 conclude that certainly the districts are close enough and
23 enough changes were made that to try to constitutionalize a
24 rule about freezing or untouch districts would be, in our
25 opinion, something that the federal court was not equipped to

1 do.

2 **JUDGE SCHROEDER:** So if the 2011 districts were not
3 challenged, but the legislature decided to redraw some of them
4 in Wake County as part of this overall effort, are we not to
5 assume that they were okay in the first instance?

6 **MR. STRACH:** The 2011 Wake County districts?

7 **JUDGE SCHROEDER:** Right. There were districts we
8 didn't find to be unconstitutional.

9 **MR. STRACH:** Right.

10 **JUDGE SCHROEDER:** We found 33 and 38 to be
11 unconstitutional, if I recall. So, for example, 40 was not
12 found to be unconstitutional or 37 was not found to be
13 unconstitutional. 37 doesn't abut any of these. So if we
14 didn't find that to be unconstitutional, would the
15 legislature -- wouldn't they have assumed that it's okay to go
16 forward with that one, even if it may have had some split
17 districts?

18 **MR. STRACH:** Not necessarily, because while 33 and 38
19 were unconstitutional, as a general matter, the statewide
20 evidence of the split precincts and other traditional
21 redistricting principle violations played into that; and so one
22 could equally assume that in order to remedy the gerrymanders,
23 we need to make sure that in the particular grouping we're
24 dealing with that we don't continue to have any indicia of
25 gerrymandering in general.

EXHIBIT N

1 specifically remember what type of information
 2 is stored here. I just generally know it's part
 3 of how a Maptitude plan is stored.
 4 Q. Okay. That's all on that.
 5 I think -- correct me if I'm wrong, but
 6 you've offered an opinion that a map was drawn
 7 as of June 28, 2017?
 8 A. I believe that you are referring to the House
 9 map that's titled House J-25003. I think that's
 10 what you're referring to.
 11 Q. Yeah. How do you know that was drawn as of
 12 June 28, 2017?
 13 A. Okay. What I said was last modified. This is a
 14 Maptitude backup folder containing a draft plan,
 15 and it was last modified -- the backup was last
 16 modified on June 28th. And so what I did is I
 17 looked at the Windows metadata for the last
 18 modified date and I wrote down the date that I
 19 saw.
 20 Q. Does the metadata say when the map was first
 21 drawn?
 22 A. No. It's last modified so at some point there
 23 already existed a draft map. Dr. Hofeller
 24 appeared to have his Maptitude program set up in
 25 a way to automatically save backups when certain

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1 actions were taken, say, on his Maptitude
 2 program, and so there were backups taken, and
 3 the last modified date for this plan was
 4 June 28th.
 5 Q. Okay. Did you get a chain of custody for this
 6 information that you reviewed?
 7 MR. JACOBSON: Objection; vague.
 8 THE WITNESS: I don't know what the
 9 question means.
 10 BY MR. FARR:
 11 Q. Well, do you know the people that put their
 12 hands on this from the time it was sent by
 13 Stephanie Hofeller to when it got to you?
 14 A. Well, I think I've given you all the information
 15 that I have, and I'm happy to review it again,
 16 but I received -- and again, I think -- if
 17 you're referring specifically to this Maptitude
 18 folder -- any of these other Maptitude folders
 19 I'm mentioning, I told you I got it from Stroz
 20 Friedberg and I told you what plaintiffs'
 21 counsel told me about the providence.
 22 Q. But you don't have a chain of custody line
 23 showing who touched the stuff by the time it was
 24 delivered by Stephanie Hofeller?
 25 A. Again, I don't know what that question means.

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1 Again, I'm telling you I've told you everything
 2 that I know.
 3 Q. So on page 2 of your report you say Dr. Hofeller
 4 assigned 90.9 percent of the state's census
 5 blocks into House districts containing
 6 88.2 percent of the population.
 7 A. Yes.
 8 Q. When you compared the June 28th draft to the
 9 final enacted plan, only 9.1 percent of the
 10 census blocks had changed; is that correct?
 11 A. I see that, yes.
 12 Q. How did you perform this analysis?
 13 A. Sure, I'm happy to walk you through this, and I
 14 think it might be useful if we just look at
 15 maybe the first figure.
 16 Q. What page are you on?
 17 A. So I'll just direct you to page 4, Figure 1.
 18 What I'm going to tell you, I'm just going to
 19 explain this in a general way that applies
 20 equally to any of these figures in the first
 21 couple pages of my report.
 22 So what I did to produce these
 23 calculations -- and I'm going to start all of
 24 this by saying in the first section of my report
 25 which goes all the way until I believe page 37,

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1 I think, or page 38, I guess, I do explain in
 2 detail how I produced these calculations. So
 3 I'm just going to say that's the basis of the
 4 answer I'm about to give you, and I'll give you
 5 my answer kind of at a high level and you can
 6 ask for a more detailed answer if you like.
 7 So what I did is I looked grouping by
 8 grouping, and so within each grouping -- and
 9 we'll just start with Mecklenburg in Figure 1 as
 10 an example. There are 12 districts in the
 11 Mecklenburg House grouping. And so, of course,
 12 there were 12 districts in Dr. Hofeller's draft
 13 plan for Mecklenburg. And for each of the
 14 districts in Dr. Hofeller's draft map -- and
 15 when I use the phrase draft map in this context,
 16 right now I'm talking about this draft map
 17 NC House J-25003.bak.zip which was last modified
 18 on June 28, 2017, which I reference in my report
 19 starting on page 3.
 20 I look through Dr. Hofeller's districts
 21 in Mecklenburg, and for each district I
 22 identified the corresponding district in the
 23 final House Bill 927 plan from August 2017. And
 24 what I mean by corresponding district is I
 25 identified for each of Dr. Hofeller's draft

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1 districts the House Bill 927 district that most
 2 overlaps in population with Dr. Hofeller's draft
 3 district, and so I did this for each one of
 4 Dr. Hofeller's 12 districts -- draft districts
 5 here in Mecklenburg. So I first identified a
 6 corresponding district in the final House
 7 Bill 927 plan.

8 Q. Can I ask you a question.
 9 What do you think most overlaps by
 10 population? How did you measure that?

11 A. Okay. I counted the population overlap between
 12 Dr. Hofeller's draft district and every one of
 13 the 12 districts in the final House Bill 927
 14 plan, and the corresponding district is the one
 15 who shares the most population with
 16 Dr. Hofeller's draft district. So that's what I
 17 mean by overlap in population. You determine
 18 how much do each of the 927 -- the final House
 19 Bill 927 plan district share a common population
 20 that is also in the particular Dr. Hofeller
 21 draft district that I'm looking at, and I
 22 identify the corresponding district.

23 Just to kind of simplify this, you can
 24 obviously see from Figure 1 that the
 25 corresponding district for District 107 in

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1 Dr. Hofeller's draft map is also named
 2 District 107 in the final House Bill 927 map,
 3 and that's almost always the case that the
 4 numbers did not change. There was only one
 5 instance here where it did change.

6 What Dr. Hofeller had drawn as District
 7 Number 88 later became renamed or renumbered as
 8 District 92 in its exact same form, no changes
 9 in the boundaries, but it was renumbered as
 10 District Number 92. So I would call District
 11 Number 92 the corresponding district to
 12 Dr. Hofeller's draft 88 -- draft District 88.
 13 So that's how I identify corresponding
 14 districts.

15 Now, on to the actual calculations.
 16 What you see in this figure is the percent
 17 overlap in population that had overlap from
 18 Dr. Hofeller's draft districts to the
 19 corresponding districts in the final House
 20 Bill 927.

21 Now, what I did for the entire draft
 22 plan, all 120 draft districts in Dr. Hofeller's
 23 draft plan is I counted up the degree to which
 24 how much population actually overlaps with each
 25 of Dr. Hofeller's draft district, corresponding

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1 district in the final House Bill 927 plan.
 2 And as you can see from this figure,
 3 for most of the districts in Mecklenburg, it's
 4 actually 100 percent overlap, and then you'll
 5 see that there's one district that's at
 6 96 percent, another district at 95.97 percent
 7 and so on.

8 But I counted the population overlap
 9 for each of these districts, and I added that
 10 overlapping population for all 120 districts,
 11 then divided by North Carolina's total
 12 population, and that's how we arrived at the
 13 number 88.2 percent.

14 I did a similar calculation except
 15 instead of using population I looked at the
 16 number of census blocks. In other words, I was
 17 asking what percentage -- or how many census
 18 blocks from Dr. Hofeller's draft District 107
 19 overlapped with or are also assigned to
 20 District 107 in the final House Bill 927 plan.
 21 And obviously you can see here that that answer
 22 would be 100 percent.

23 But I did that for census blocks as
 24 well. So I calculated for the entire state what
 25 percentage of North Carolina census blocks were

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1 already in place in their corresponding final
 2 districts in the final House Bill 927 plan by
 3 the time that Dr. Hofeller drew this draft map
 4 in late June of 2017, and that percentage turned
 5 out to be 90.9 percent. So that's how these two
 6 numbers came to be calculated.

7 Q. What software did you use to do this?
 8 A. I didn't use software. I wrote my own code. I
 9 calculated it in -- its call the R programming
 10 language. And just to explain, that's -- this
 11 is what I do a lot of my analysis in. If you
 12 look at my backup files or my computer code
 13 files, you'll see a lot of it is written in R
 14 code.

15 Q. And the percentages you calculated in the
 16 beginning of paragraph 11, those are statewide
 17 percentages?
 18 A. Paragraph 11? Where are you?
 19 Q. I'm sorry. My question 11.
 20 A. The answer to your Question Number 11,
 21 Dr. Hofeller, is --
 22 MR. JACOBSON: You said Dr. Hofeller.
 23 THE WITNESS: I'm just going to stop
 24 trying to talk after 7:00 p.m. here.
 25 MR. FARR: My problem.

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EXHIBIT O



NORTH CAROLINA GENERAL ASSEMBLY

June 27, 2017

VIA HAND DELIVERY

Dr. Thomas Hofeller

Dear Dr. Hofeller:

We require your professional assistance. The General Assembly will be drawing new legislative redistricting maps to include both House and Senate districts pursuant to an order from a federal district court. Based on your knowledge and experience, we believe you are best qualified to produce such maps. Therefore, we offer to engage you to produce such maps for possible presentation to the House and Senate Redistricting Committees for their consideration and ultimate use by the General Assembly.

OUR OFFER OF ENGAGEMENT IS SUBJECT TO THE FOLLOWING TERMS:

- You will produce a map of 120 House districts and a map of 50 Senate districts in North Carolina that complies with criteria adopted by the House and Senate Redistricting Committees (the "Committees"). The maps you produce may be presented to the Committees, the General Assembly or any third party in the sole discretion of the Co-Chairs.
- As a legislative contractor and consultant, your work will be subject to legislative confidentiality as prescribed by Article 17 of Chapter 120 of the General Statutes. Your work may also be subject to the doctrine of legislative privilege as provided by the common law in North Carolina. By directive of the Committees, these protections will accrue to the benefit of the Co-Chairs of the Committees, and the Co-Chairs shall have the sole discretion to grant any request for their waiver. Finally, and notwithstanding the foregoing, all drafting and information requests to you and documents prepared by you concerning redistricting shall no longer be confidential and shall become public records upon the act establishing the relevant district plan becoming law.
- To allow us and you to better to predict the cost of this engagement, we are prepared to offer compensation to you in the form of a flat fee equal to \$50,000.00 payable upon

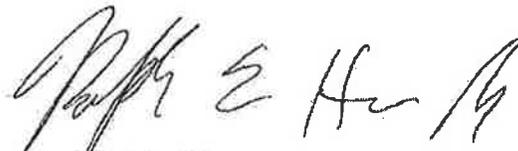
LDNC001879

receipt by the Legislative Services Officer of an invoice from you for work performed and upon prior approval from the President Pro Tempore of the Senate and the Speaker of the House.

Should the terms of this engagement be acceptable to you, please indicate your acceptance in the space marked below. We appreciate your willingness to serve in this manner, and we look forward to working with you pursuant to the Committees' directive.

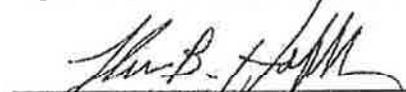
Sincerely,


Rep. David Lewis


Sen. Ralph Hise

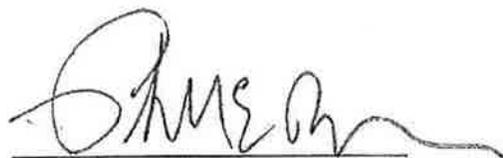
Enclosures

Agreed and Accepted to by:


Dr. Thomas Hofeller

Date: June 27, 2017

Agreement Authorized and Approved:


Sen. Phil Berger
President Pro Tempore


Rep. Tim Moore
Speaker

EXHIBIT P



**NORTH CAROLINA GENERAL ASSEMBLY
JOINT SELECT COMMITTEE ON CONGRESSIONAL REDISTRICTING**

February 16, 2016

VIA HAND DELIVERY

Dr. Thomas Hofeller

Dear Dr. Hofeller:

We require your professional assistance. Earlier today, a motion prevailed in the meeting of the Joint Select Committee on Congressional Redistricting (the "Committee") authorizing the Co-Chairs to engage a map drawing expert to produce a contingent Congressional Map or Maps using the attached criteria prevailing today on individual motions in the Committee (the "Adopted Criteria"). Based on your knowledge and experience, we believe you are best qualified to produce such a map or maps. Therefore, we offer to engage you to produce such a map for possible presentation to the Committee and ultimate use by the General Assembly.

OUR OFFER OF ENGAGEMENT IS SUBJECT TO THE FOLLOWING TERMS:

- You will produce a map of 13 congressional districts in North Carolina that complies with the Adopted Criteria. The map you produce may be presented to the Committee, the General Assembly or any third party in the sole discretion of the Co-Chairs.
- As a legislative contractor and consultant, your work will be subject to legislative confidentiality as prescribed by Article 17 of Chapter 120 of the General Statutes. Your work may also be subject to the doctrine of legislative privilege as provided by the common law in North Carolina. By directive of the Committee, these protections will accrue to the benefit of the Co-Chairs of the Committee, and the Co-Chairs shall have the sole discretion to grant any request for their waiver. Finally, and notwithstanding the foregoing, all drafting and information requests to you and documents prepared by you concerning redistricting shall no longer be confidential and shall become public records upon the act establishing the relevant district plan becoming law.
- To allow us and you to better to predict the cost of this engagement, we are prepared to offer compensation to you in the form of a flat fee equal to \$25,000.00 payable upon

receipt by the Legislative Services Officer of an invoice from you for work performed and upon prior approval from the President Pro Tempore of the Senate and the Speaker of the House.

Should the terms of this engagement be acceptable to you, please indicate your acceptance in the space marked below. We appreciate your willingness to serve in this manner, and we look forward to working with you pursuant to the Committee's directive.

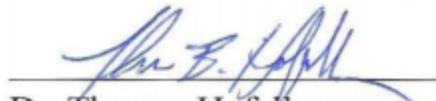
Sincerely,


Rep. David Lewis


Sen. Bob Rucho

Enclosures

Agreed and Accepted to by:


Dr. Thomas Hofeller

Date: February 16, 2016

Agreement Authorized and Approved:

Sen. Phil Berger
President Pro Tempore

Rep. Tim Moore
Speaker

EXHIBIT Q

STATE OF NORTH CAROLINA

File No.

18 CVS 014001

WAKE

County

In The General Court Of Justice
District Superior Court Division

COMMON CAUSE et al.,

Additional File Numbers

VERSUS

REPRESENTATIVE DAVID R. LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON REDISTRICTING, et al.,

SUBPOENA

G.S. 1A-1, Rule 45; 8-59, -61, -63; 15A-801, -802

Party Requesting Subpoena

State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

TO

Name And Address Of Person Subpoenaed

Kathleen H. Hofeller
2427 Springmoor Circle

Alternate Address

Raleigh NC 27615

Telephone No.

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
produce and permit inspection and copying of the following items, at the place, date and time indicated below.
See attached list. (List here if space sufficient)

Name And Location Of Court/Place Of Deposition/Place To Produce

Edwin M. Speas, Jr. and Caroline P. Mackie
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh NC 27601

Date To Appear/Produce, Until Released

02/01/2019

Time To Appear/Produce, Until Released

9:00

AM PM

Date

1/15/2019

Name And Address Of Applicant Or Applicant's Attorney

Edwin M. Speas, Jr. and Caroline P. Mackie
Poyner Spruill LLP
P.O. Box 1801
Raleigh NC 27602-1801

Signature

Caroline P. Mackie

- Deputy CSC Assistant CSC Clerk Of Superior Court
Magistrate Attorney/DA District Court Judge
Superior Court Judge

Telephone No. Of Applicant Or Applicant's Attorney

919-783-6400

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- personal delivery registered or certified mail, receipt requested and attached.
telephone communication by Sheriff (use only for a witness subpoenaed to appear and testify).
telephone communication by local law enforcement agency (use only for a witness subpoenaed to appear and testify in a criminal case).

NOTE TO COURT: If the witness was served by telephone communication from a local law enforcement agency in a criminal case, the court may not issue a show cause order or order for arrest against the witness until the witness has been served personally with the written subpoena.

I was unable to serve this subpoena. Reason unable to serve:

Service Fee \$ Paid Due

Date Served

Name Of Authorized Server (type or print)

Signature Of Authorized Server

Title/Agency

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

(c) Protection of Persons Subject to Subpoena

- (1) **Avoid undue burden or expense.** - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.
- (2) **For production of public records or hospital medical records.** - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.
- (3) **Written objection to subpoenas.** - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:
 - a. The subpoena fails to allow reasonable time for compliance.
 - b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
 - c. The subpoena subjects a person to an undue burden or expense.
 - d. The subpoena is otherwise unreasonable or oppressive.
 - e. The subpoena is procedurally defective.
- (4) **Order of court required to override objection.** - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.
- (5) **Motion to quash or modify subpoena.** - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

- (6) **Order to compel; expenses to comply with subpoena.** - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.
- (7) **Trade secrets; confidential information.** - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.
- (8) **Order to quash; expenses.** - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoena

- (1) **Form of response.** - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (2) **Form of producing electronically stored information not specified.** - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.
- (3) **Electronically stored information in only one form.** - The person responding need not produce the same electronically stored information in more than one form.
- (4) **Inaccessible electronically stored information.** - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.
- (5) **Specificity of objection.** - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you.

**ATTACHMENT TO JANUARY 15, 2019 SUBPOENA TO KATHLEEN H. HOFELLER
AND THE ESTATE OF THOMAS HOFELLER**

DEFINITIONS

For purposes of this Subpoena, the following definitions shall apply except as otherwise required by context:

1. The term “document,” whether singular or plural, is used herein in the broadest sense of the term and means each and every writing of whatever nature, and shall mean the original and any draft or copy that differs in any way from the original of any written or graphic matter, however produced or reproduced, and shall mean, without limitation, each and every tangible thing from which information can be processed or transcribed from disk, diskette, compact disc, tape or some other electronic media or data computations. The term includes, but it is not limited to, letters, electronic mail (“email”)¹ and any attachments, messages, facsimile transmissions, telegrams, memoranda, telex messages, reports, books, agreements, correspondence, contracts, financial statements, instruments, ledgers, journals, accountings, minutes of meetings, payrolls, studies, calendar and diary entries, notes, charts, schedules, tabulations, maps, work papers, brochures, evaluations, memoranda of telephone conversations, audio and video tape recordings, internal communications, bills, tapes, computer printouts, drawings, designs, diagrams, exhibits, photographs, reproductions, any marginal comments appearing on any document and copies of documents which are not identical duplicates of the originals (e.g., because handwritten or “blind copy” notes or notations appear thereon or are attached thereto). The term “document(s)” includes the defined term “Electronically-Stored Information,” which is defined below. The term “document” specifically seeks the production of Electronically-Stored Information in native format.

2. The term “Electronically-Stored Information” or “ESI” shall mean any and all electronic data or information stored on a computing device. Information and data is considered “electronic” if it exists in a medium that can only be read through the use of computing device. This term includes but is not limited to databases; all text file and word-processing documents (including metadata); presentation documents; spreadsheets; graphics, animations, and images (including but not limited to “JPG, GIF, BMP, PDF, PPT, and TIFF files); email, email strings, and instant messages (including attachments, logs of email history and usage, header information and “deleted” files); email attachments; calendar and scheduling information; cache memory; Internet history files and preferences; audio; video, and audiovisual recordings; voicemail stored on databases; networks; computers and computer systems; computer system activity logs; servers; archives; back-up or disaster recovery systems; hard drives; discs; CD’s; diskettes; removable drives; tapes; cartridges and other storage media; printers; scanners; personal digital assistants; computer calendars; handheld wireless devices; cellular telephones; pagers; fax machines; and voicemail systems. This term includes but is not limited to on-

¹ One email address used by Dr. Hofeller at relevant times was celticheal@aol.com. This subpoena covers responsive emails at that email address and any other email addressed used by Dr. Hofeller at relevant times.

screen information, system data, archival data, legacy data, residual data, and metadata that may not be readily viewable or accessible, and all file fragments and backup files.

3. This Subpoena further requests the forensic copying and examination of ESI, as well as for the production of ESI. The purpose of obtaining ESI from you is to obtain all meta-data, residual data, file fragments, and other information that is not reasonably accessible for forensic examination of authenticity. Any storage device that contains, or may contain, ESI requested shall be produced for forensic copying and examination. Forensic copying usually may be done on-site, without taking possession of your computing devices, at minimal inconvenience, cost, or interruption to you. The forensic copying will eliminate the need for you to search all storage devices or sift through a vast amount of information. Once forensic copies are made, the parties may agree on search terms to reduce costs and to preserve privacy of non-discoverable information. You are encouraged to comply reasonably and to confer immediately with the undersigned counsel for an agreement on each party's respective rights and responsibilities.
4. The term "redistricting," if not otherwise qualified, shall be construed to mean the redistricting of the North Carolina State Senate and State House districts in 2011 and 2017.

LIST OF DOCUMENTS AND THINGS TO BE PRODUCED
PURSUANT TO THIS SUBPOENA

1. All documents of, created by, or held by Thomas Hofeller in your possession, custody, or control relating to or concerning the redistricting of the North Carolina State Senate and State House in 2011 or 2017, including but not limited to, all correspondence, reports, notes, memos, data, electronic files, maps, charts, and/or graphs relating to or concerning the redistricting of the North Carolina State Senate and State House in 2011 or 2017.
2. All documents, notes, or correspondence reflecting any instructions, criteria, or requests of members of the North Carolina General Assembly regarding the redistricting of the North Carolina State Senate and State House in 2011 or 2017.
3. All documents, notes, or correspondence containing, relating to, or evidencing the first version and each subsequent version of any redistricting maps and/or proposed redistricting maps, or any parts thereof, prepared by or consulted by Thomas Hofeller for purposes of the redistricting of the North Carolina State Senate or State House in 2011 or 2017, as well as any information (including but not limited to ESI) evidencing the date on which such maps (or parts thereof) were created and/or modified.
4. Any storage device in your possession, custody, or control that contains, or may contain: (1) any and all ESI requested in the preceding paragraphs; (2) and/or any ESI relating to any documents requested in the preceding paragraphs.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email and by U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

Amar Majmundar
Stephanie A. Brennan
NC Department of Justice
P.O. Box 629
114 W. Edenton St.
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
*Counsel for the State of North Carolina and State Board of
Elections and Ethics Enforcement and its members*

Phillip J. Strach
Michael McKnight
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Counsel for the Legislative Defendants

This the 15th day of January, 2019.



Caroline P. Mackie

EXHIBIT R

STATE OF NORTH CAROLINA

File No.

18 CVS 014001

WAKE County

In The General Court Of Justice
 District Superior Court Division

COMMON CAUSE et al.,

Additional File Numbers

VERSUS

REPRESENTATIVE DAVID R. LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON REDISTRICTING, et al.,

SUBPOENA

G.S. 1A-1, Rule 45; 8-59, -61, -63; 15A-801, -802

Party Requesting Subpoena
 State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

TO Name And Address Of Person Subpoenaed
 The Estate of Thomas Hofeller
 2427 Springmoor Circle

 Raleigh NC 27615

 Telephone No.

Alternate Address

 Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
- appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
- produce and permit inspection and copying of the following items, at the place, date and time indicated below.
 - See attached list. (List here if space sufficient)

Name And Location Of Court/Place Of Deposition/Place To Produce
 Edwin M. Speas, Jr. and Caroline P. Mackie
 Poyner Spruill LLP
 301 Fayetteville Street, Suite 1900
 Raleigh NC 27601

Date To Appear/Produce, Until Released
 02/01/2019

 Time To Appear/Produce, Until Released
 9:00 AM PM

Name And Address Of Applicant Or Applicant's Attorney
 Edwin M. Speas, Jr. and Caroline P. Mackie
 Poyner Spruill LLP
 P.O. Box 1801
 Raleigh NC 27602-1801

 Telephone No. Of Applicant Or Applicant's Attorney
 919-783-6400

Date
 1/15/2019

 Signature
 Caroline P. Mackie

 Deputy CSC Assistant CSC Clerk Of Superior Court
 Magistrate Attorney/DA District Court Judge
 Superior Court Judge

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- By personal delivery. registered or certified mail, receipt requested and attached.
 telephone communication by Sheriff (use only for a witness subpoenaed to appear and testify).
 telephone communication by local law enforcement agency (use only for a witness subpoenaed to appear and testify in a criminal case).

NOTE TO COURT: If the witness was served by telephone communication from a local law enforcement agency in a criminal case, the court may not issue a show cause order or order for arrest against the witness until the witness has been served personally with the written subpoena.

I was unable to serve this subpoena. Reason unable to serve: _____

Service Fee \$ <input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served	Name Of Authorized Server (type or print)	Signature Of Authorized Server	Title/Agency
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NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

(c) Protection of Persons Subject to Subpoena

- (1) **Avoid undue burden or expense.** - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.
- (2) **For production of public records or hospital medical records.** - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.
- (3) **Written objection to subpoenas.** - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:
- The subpoena fails to allow reasonable time for compliance.
 - The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
 - The subpoena subjects a person to an undue burden or expense.
 - The subpoena is otherwise unreasonable or oppressive.
 - The subpoena is procedurally defective.
- (4) **Order of court required to override objection.** - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.
- (5) **Motion to quash or modify subpoena.** - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.
- (6) **Order to compel; expenses to comply with subpoena.** - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.
- (7) **Trade secrets; confidential information.** - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.
- (8) **Order to quash; expenses.** - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoena

- (1) **Form of response.** - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (2) **Form of producing electronically stored information not specified.** - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.
- (3) **Electronically stored information in only one form.** - The person responding need not produce the same electronically stored information in more than one form.
- (4) **Inaccessible electronically stored information.** - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.
- (5) **Specificity of objection.** - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you.

**ATTACHMENT TO JANUARY 15, 2019 SUBPOENA TO KATHLEEN H. HOFELLER
AND THE ESTATE OF THOMAS HOFELLER**

DEFINITIONS

For purposes of this Subpoena, the following definitions shall apply except as otherwise required by context:

1. The term “document,” whether singular or plural, is used herein in the broadest sense of the term and means each and every writing of whatever nature, and shall mean the original and any draft or copy that differs in any way from the original of any written or graphic matter, however produced or reproduced, and shall mean, without limitation, each and every tangible thing from which information can be processed or transcribed from disk, diskette, compact disc, tape or some other electronic media or data computations. The term includes, but it is not limited to, letters, electronic mail (“email”)¹ and any attachments, messages, facsimile transmissions, telegrams, memoranda, telex messages, reports, books, agreements, correspondence, contracts, financial statements, instruments, ledgers, journals, accountings, minutes of meetings, payrolls, studies, calendar and diary entries, notes, charts, schedules, tabulations, maps, work papers, brochures, evaluations, memoranda of telephone conversations, audio and video tape recordings, internal communications, bills, tapes, computer printouts, drawings, designs, diagrams, exhibits, photographs, reproductions, any marginal comments appearing on any document and copies of documents which are not identical duplicates of the originals (e.g., because handwritten or “blind copy” notes or notations appear thereon or are attached thereto). The term “document(s)” includes the defined term “Electronically-Stored Information,” which is defined below. The term “document” specifically seeks the production of Electronically-Stored Information in native format.

2. The term “Electronically-Stored Information” or “ESI” shall mean any and all electronic data or information stored on a computing device. Information and data is considered “electronic” if it exists in a medium that can only be read through the use of computing device. This term includes but is not limited to databases; all text file and word-processing documents (including metadata); presentation documents; spreadsheets; graphics, animations, and images (including but not limited to “JPG, GIF, BMP, PDF, PPT, and TIFF files); email, email strings, and instant messages (including attachments, logs of email history and usage, header information and “deleted” files); email attachments; calendar and scheduling information; cache memory; Internet history files and preferences; audio; video, and audiovisual recordings; voicemail stored on databases; networks; computers and computer systems; computer system activity logs; servers; archives; back-up or disaster recovery systems; hard drives; discs; CD’s; diskettes; removable drives; tapes; cartridges and other storage media; printers; scanners; personal digital assistants; computer calendars; handheld wireless devices; cellular telephones; pagers; fax machines; and voicemail systems. This term includes but is not limited to on-

¹ One email address used by Dr. Hofeller at relevant times was celticheal@aol.com. This subpoena covers responsive emails at that email address and any other email addressed used by Dr. Hofeller at relevant times.

screen information, system data, archival data, legacy data, residual data, and metadata that may not be readily viewable or accessible, and all file fragments and backup files.

3. This Subpoena further requests the forensic copying and examination of ESI, as well as for the production of ESI. The purpose of obtaining ESI from you is to obtain all meta-data, residual data, file fragments, and other information that is not reasonably accessible for forensic examination of authenticity. Any storage device that contains, or may contain, ESI requested shall be produced for forensic copying and examination. Forensic copying usually may be done on-site, without taking possession of your computing devices, at minimal inconvenience, cost, or interruption to you. The forensic copying will eliminate the need for you to search all storage devices or sift through a vast amount of information. Once forensic copies are made, the parties may agree on search terms to reduce costs and to preserve privacy of non-discoverable information. You are encouraged to comply reasonably and to confer immediately with the undersigned counsel for an agreement on each party's respective rights and responsibilities.
4. The term "redistricting," if not otherwise qualified, shall be construed to mean the redistricting of the North Carolina State Senate and State House districts in 2011 and 2017.

LIST OF DOCUMENTS AND THINGS TO BE PRODUCED
PURSUANT TO THIS SUBPOENA

1. All documents of, created by, or held by Thomas Hofeller in your possession, custody, or control relating to or concerning the redistricting of the North Carolina State Senate and State House in 2011 or 2017, including but not limited to, all correspondence, reports, notes, memos, data, electronic files, maps, charts, and/or graphs relating to or concerning the redistricting of the North Carolina State Senate and State House in 2011 or 2017.
2. All documents, notes, or correspondence reflecting any instructions, criteria, or requests of members of the North Carolina General Assembly regarding the redistricting of the North Carolina State Senate and State House in 2011 or 2017.
3. All documents, notes, or correspondence containing, relating to, or evidencing the first version and each subsequent version of any redistricting maps and/or proposed redistricting maps, or any parts thereof, prepared by or consulted by Thomas Hofeller for purposes of the redistricting of the North Carolina State Senate or State House in 2011 or 2017, as well as any information (including but not limited to ESI) evidencing the date on which such maps (or parts thereof) were created and/or modified.
4. Any storage device in your possession, custody, or control that contains, or may contain: (1) any and all ESI requested in the preceding paragraphs; (2) and/or any ESI relating to any documents requested in the preceding paragraphs.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email and by U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

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*Counsel for the State of North Carolina and State Board of
Elections and Ethics Enforcement and its members*

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Counsel for the Legislative Defendants

This the 15th day of January, 2019.



Caroline P. Mackie