

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Case No. 18 CVS 014001

COMMON CAUSE; *et al.*

*Plaintiffs,*

v.

DAVID R. LEWIS, *et al.*

*Defendants.*

**LEGISLATIVE DEFENDANTS'  
MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS  
FROM N.C. DEMOCRATIC PARTY**

Legislative Defendants, under N.C. R. Civ. P. 37, move to compel responses to Request 12 of their First Requests for Production of Documents, seeking documents in the possession, custody, or control of Plaintiff North Carolina Democratic Party (“NCDP”) “containing District-by-District Analytics Reports, DNC Support Scores, and/or similar or related analyses” for the legislative districts at issue in this action. In support of this motion, Legislative Defendants show the court:

**INTRODUCTION**

The essence of the NCDP’s allegations in this case is that, due to the lines of some of the districts in the 2017 House and Senate Plans, the NCDP’s ability to fulfill its purpose of persuading voters to elect Democratic candidates to the North Carolina General Assembly is inhibited. Yet, despite these allegations, the NCDP has flatly refused to search for or produce a metric on which they rely, and to which they have access, that may shed light on whether Democratic candidates can, in fact, prevail in the districts challenged in this action. The documents sought by Legislative Defendants through their Request for Production 12, including any summaries, statistics, or analyses of any “support scores” showing the level of support for Democratic candidates within

the challenged districts, is within the scope of permissible discovery under the North Carolina Rules of Civil Procedure and the NCDP should be compelled to produce them.

### **RELEVANT PROCEDURAL AND FACTUAL BACKGROUND**

1. Legislative Defendants served their First Set of Interrogatories and Requests for Production of Documents on Plaintiffs on February 15, 2019. Legislative Defendants received written responses from all plaintiffs on March 18, 2019, but received no documents from NCDP with its responses. Twelve days later, on March 30, 2019, in response to a deficiency letter from Legislative Defendants, counsel for the NCDP stated that it had responsive documents, but those documents were being withheld because no protective order had been entered in the case. (*See attached Ex. 1*).

2. After learning that NCDP had withheld documents for this reason, Legislative Defendants took steps to finalize the protective order negotiated between the parties on Monday, April 1, 2019. Despite a two-week gap in which no documents were produced, NCDP failed to produce all responsive documents in its possession but instead began a “rolling production” in which they produced an initial batch of 1,455 documents on April 1. NCDP then produced 30 documents on April 2, another 1,313 documents on April 4, and a batch of 969 documents on April 12. NCDP completed its document production on April 16, 2019, by producing 2,409 documents. Legislative Defendants promptly reviewed these documents and held a meet-and-confer conference with counsel for Plaintiffs on April 23, 2019, to discuss issues with five specific categories of documents from NCDP’s production.

3. Following this meet-and-confer conference and subsequent email correspondence, the parties have reached an impasse with respect to one specific document request to NCDP: Request for Production 12 which asked NCDP to produce “all documents in your possession,

custody, or control containing District-by-District Analytics Reports, DNC Support Scores, and/or similar or related analyses for any North Carolina Legislative District . . . from January 1, 2009 to the present.” (See attached Ex. 2 at p. 22) (NCDP’s Responses to Legislative Defendants’ Discovery Requests). NCDP’s response to this Request contained several boilerplate objections including that the Request was (1) “overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence,” (2) that “mandatory disclosure of this information would violate the First Amendment,” and (3) an objection to producing documents “to the extent this request seeks information protected by the attorney-client privilege, work product, or any other legal privilege.” (*Id.*) Notwithstanding these objections, the NCDP stated that it “will produce non-privileged, responsive documents within its possession, custody, and control.” (*Id.*)

4. Counsel for Legislative Defendants is aware, through documents and information available in the public domain, that the Democratic National Committee and its constituent organizations around the country, including the NCDP,<sup>1</sup> use “support scores” to identify prospective voters’ likely support for Democratic Party candidates. (See <https://madisondems.org/wp-content/uploads/2017/06/DNC-Scores-in-VoteBuilder.pdf>) (last visited May 6, 2019). Based upon those scores, which range from 1 to 100, prospective voters are then placed in categories such as “Strong Democrat,” “Strong Republican,” and “Persuadable,” among others. (*Id.*) It appears that information related to “support scores” may be stored in a database referred to as the Voter Activation Network (“VAN”) or “VoteBuilder,” however, based on the publication of information about these scores, at least some information related to “support

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<sup>1</sup> The NCDP has acknowledged in its Interrogatory responses that “the NCDP is the state level organization of the Democratic Party pursuant to 52 U.S.C. § 30101(15)” while “the Democratic National Committee is the national organization of the Democratic party and as such is responsible for the operation of the Democratic Party at the national level.” (See Ex. 2 at pp 8-9) (NCDP response to Interrogatory 1(g)).

scores” is maintained by Democratic Party organizations outside of this database and, in some instances, made available to the public.

5. After determining that no documents containing “support scores” were included in the NCDP’s production, counsel for Legislative Defendants inquired about this issue during its meet-and-confer discussions with counsel for NCDP. The NCDP used 11 search terms to collect potentially responsive documents to NCDP’s discovery requests but neither the term “support score” nor any variant of that term was included among the 11 search terms. Similarly, Plaintiffs did not include the terms “analysis” or “analytics” or any variants of those terms in the 11 search terms they ran. Counsel for Legislative Defendants asked during the parties’ meet-and-confer conference whether NCDP would agree to run a search for the term “support score” to ensure that any responsive documents were produced. NCDP declined this request both at the meet-and-confer conference and in response to an email following the conference. (*See* attached Ex. 3) (May 1, 2019 Email from Stanton Jones).

6. In the Amended Complaint, the NCDP alleges that the districts challenged in this litigation “frustrate and burden NCDP’s ability to achieve its essential purposes and to carry out its core functions, including registering voters, attracting volunteers, raising money in gerrymandered districts, campaigning, turning out the vote, and ultimately electing candidates who will pursue policies favorable to NCDP members and the public generally in the North Carolina General Assembly.” (Am. Compl. ¶ 8).

7. Additionally, the NCDP, along with the other plaintiffs, allege past election results were used in drawing the 2011 plans in order to “predict ‘partisan voting behavior’ of the new districts,” (*Id.* at ¶ 69), and criticize Legislative Defendants for including election data as one of the criterion for drawing the 2017 plans. (*Id.* at ¶¶ 94-98). The plaintiffs also allege that the House

and Senate Committees provided data on the partisan breakdown of each proposed district. (*Id.* at ¶ 112). The plaintiffs also claim “outside expert analyses” that use election data confirm that the 2017 plans were gerrymandered to favor Republicans, (*Id.* at ¶¶ 110-111), and that they overlaid election results onto each House and Senate district to show the number of districts Republicans would win under the 2017 plans. (*Id.* at ¶¶ 113-114). The Amended Complaint repeatedly alleges that specific House and Senate districts were drafted to ensure that they would elect Republicans or to make them “as competitive as possible for Republicans,” and that others were “packed” full of Democratic voters so that neighboring districts would favor Republicans. (*See, e.g., id.* at ¶¶ 11-46).

8. The documents produced by the NCDP show that the organization used “support scores” and information obtained from the VAN or VoteBuilder database both in its day-to-day operations and in evaluating the districts at issue in this case. Documents produced by the NCDP in response to discovery requests show that the term “support score” was discussed in a new employee orientation guide and that the VAN or VoteBuilder system may have been used to evaluate new districts following the 2017 redistricting at issue here. In addition, the NCDP’s website states that the VoteBuilder tool, which it makes available to Democratic candidates, “allows campaigns to build highly targeted lists of voters including voter information, such as addresses, phone numbers, and voting history so that they can reach out to voters to get their message and the Democratic message out voters across the state.” (*See* <https://www.ncdp.org/about-votebuilder/>) (last visited May 6, 2019).

9. Following the meet-and-confer conference in which counsel for NCDP stated that neither “support scores” nor the VAN system was used for redistricting purposes, counsel for Legislative Defendants sent counsel for NCDP a detailed email explaining that those

representations were not correct and, in any event, that “support scores” and related analyses were proper subjects of discovery under the North Carolina Rules of Civil Procedure in light of the allegations made by NCDP in the Amended Complaint. To alleviate concerns about the alleged proprietary nature of the “support scores” or related analyses, counsel for Legislative Defendants clarified that Legislative Defendants were not seeking “support scores” or other metrics assigned to individual voters if that information was available on a district-wide basis with respect to the districts at issue in this case. Counsel for Legislative Defendants asked counsel for NCDP to reconsider its refusal to run a search for the term “support score” and invited them to propose an alternative approach that would allow NCDP to determine whether any responsive documents containing this term and any related analyses existed.

10. Rather than engage in further dialogue with counsel for Legislative Defendants to reach a resolution on this subject, counsel for NCDP shut off any further discussion on the subject, writing that “NCDP has already produced an enormous volume of materials responsive to your requests, at an extraordinary cost, including extensive information [sic] district-level analysis of the districts in question.” Counsel for NCDP further wrote that “[a]ny further discovery concerning ‘support scores’ would be disproportionate to the needs of the case” and claimed, without citing any basis, that this inquiry “appears to be a fishing expedition for sensitive political intelligence, divorced from the issues in this case.” (*See* attached Ex. 3).

#### **APPLICABLE LEGAL STANDARDS**

The legal issue presented by this motion is straightforward: If the NCDP uses “support scores” or similar metrics to determine whether Democratic candidates have the ability to win in the legislative districts at issue in this litigation does it have an obligation to produce those documents in its possession and to which it has access in response to Legislative Defendants’

written discovery requests? For the reasons outlined below, the answer to this question must be “yes.”

Under N.C. R. Civ. P. 26(b)(1), “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence nor is it grounds for objection that the examining party has knowledge of the information as to which discovery is sought.” N.C. R. Civ. P. 34(a) states that “[a]ny party may serve on any other party a request . . . to produce and permit the party making the request, or someone acting on that party's behalf, to inspect and copy, test, or sample any designated documents, electronically stored information, or tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served.” The documents sought by Legislative Defendants through their Request for Production 12 falls within the scope of the plain language of these rules.

Contrary to the NCDP’s contentions, any “support scores,” analytics reports, and similar or related analyses bear directly on the claims made by the NCDP against the Legislative Defendants in this case. The allegations in the Amended Complaint that the challenged districts “frustrate” and “burden” the NCDP’s ability to carry out its “essential purposes” including the ability to “persuade voters to cast their ballots for” candidates who are members of the Democratic

Party (Am. Compl. ¶ 8) by itself makes these documents relevant to this matter and a proper subject of discovery under Rules 26 and 34. Adding this allegation to the NCDP and its co-Plaintiffs' claims regarding the use of election data in drawing the challenged districts and their claims regarding the alleged "packing" and "cracking" of these districts makes clear that the documents sought are "relevant to the subject matter involved in the pending action" and the NCDP should be ordered to search for and produce any such documents in its possession, custody, or control.

Although counsel for NCDP has not denied possessing any "support scores" or similar or related analyses for the challenged districts outside of the VAN/VoteBuilder system that have not been produced in response to Legislative Defendants' discovery requests, they nonetheless contend that "the VAN database is not in NCDP's possession, custody, [or] control, and NCDP does not have legal authority to turn over 'support scores' from that database." This position is at odds with case law interpreting the "possession, custody or control" language in Rule 34 in which courts have found that "the language of Rule 34 encompasses more than just actual possession." *Pugh v. Pugh*, 113 N.C. App. 375, 380, 438 S.E.2d 214 (1994). In fact, North Carolina courts have held that documents are deemed to be within the possession, custody or control of a party under Rule 34, not only where the party has actual possession, but also if the party has the "legal right to obtain the documents on demand." *Id.*; see also *Lowd v. Reynolds*, 205 N.C. App. 208, 214, 695 S.E.2d 479, 483 (2010). More recently, North Carolina Courts have followed federal court decisions on this matter and found that documents are "under the control of the litigant if it has the authority and practical ability to obtain the documents from a non-party." *SCR-Tech LLC v. Evonik Energy Svcs. LLC*, 2014 WL 7640129, at \*6 (N.C. Super. Dec. 31, 2014) (citing *Victor Stanley, Inc. v. Creative Pipe Inc.*, 269 F.R.D. 497, 523 (D. Md. 2010)).



Here, there is ample evidence in both the public domain and in the documents produced so far by NCDP to demonstrate that NCDP uses and relies upon “support scores” and perhaps other analytics in evaluating the challenged districts but has refused to search for and produce any documents containing these metrics. Accordingly, NCDP should be compelled to search for and produce all documents in its possession, custody, or control “containing District-by-District Analytics Reports, DNC Support Scores, and/or similar or related analyses” for the legislative districts at issue in this action in accordance with Legislative Defendants’ Request for Production 12.

Additionally, because NCDP’s non-compliance with the discovery request at issue here was not “substantially justified,” the Court should award Legislative Defendants their reasonable expenses, including attorneys’ fees, incurred in obtaining an order compelling the production of this information in accordance with N.C. R. Civ. P. 37(a)(4).

Finally, since the Rule 30(b)(6) deposition of the NCDP is scheduled for Wednesday, May 15, 2019, it is unlikely that this motion will be resolved before that deposition occurs. Accordingly, Legislative Defendants request that the Court amend the Case Management Order entered in this matter on February 15, 2019 to allow Legislative Defendants to continue the deposition of the NCDP and to take the deposition of any other fact witness as may be necessary as a result of NCDP’s delay in producing these responsive documents.

### **CONCLUSION**

For the foregoing reasons, Legislative Defendants respectfully request that the Court enter an Order (1) compelling NCDP to search for and produce all documents in its possession, custody, or control “containing District-by-District Analytics Reports, DNC Support Scores, and/or similar or related analyses” for the legislative districts at issue in this action; (2) granting Legislative

Defendants their reasonable expenses, including attorneys' fees, for obtaining an Order compelling NCDP to produce the documents sought in this motion; and (3) amending the Case Management Order to allow Legislative Defendants to re-open or take such other fact witness depositions as may be necessary as a result of NCDP's delay in producing these responsive documents.

This the 7th day of May, 2019.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By: 

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CERTIFICATION OF COUNSEL

Pursuant to Local Rule 5.4 and North Carolina Civil Procedure Rule 37(a)(2), and as detailed in the attached Motion, undersigned counsel for Legislative Defendants certifies that he made a good faith effort to confer with Plaintiffs' counsel to secure the material at issue in this motion without Court action.

This 7<sup>th</sup> day of May, 2019.

OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.

By:

  
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*Attorneys for Legislative Defendants*

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing in the above titled action upon all other parties to this cause by:

- Hand delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via facsimile transmittal;
- By email transmittal;
- Depositing a copy here of, first class postage pre-paid in the United States mail, properly addressed to:

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Caroline P. Mackie  
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Raleigh, NC 27602-1801  
(919) 783-6400  
[espeas@poynerspruill.com](mailto:espeas@poynerspruill.com)

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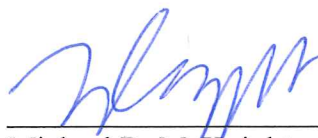
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*Counsel for Common Cause and the Individual Plaintiffs*

This the 7<sup>th</sup> day of May, 2019.

By: \_\_\_\_\_



Michael D. McKnight

38423347.1

# **EXHIBIT 1**

## Riggins, Alyssa

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**From:** Mackie, Caroline P. <CMackie@poynerspruill.com>  
**Sent:** Saturday, March 30, 2019 2:19 PM  
**To:** Strach, Phillip J.  
**Cc:** Speas, Edwin M.; AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.; 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 Pencook; Cox, Paul  
**Subject:** RE: Common Cause v. Lewis  
**Attachments:** LTR - Response to Strach's Letter re NCDP Discovery Responses - Mar 30, 2019.pdf

Phil,

Please see the attached response letter on behalf of the NCDP.

Thanks,  
Caroline

**From:** Strach, Phillip J. [mailto:phil.strach@ogletree.com]  
**Sent:** Tuesday, March 26, 2019 9:55 AM  
**To:** Jones, Stanton <Stanton.Jones@arnoldporter.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:** Speas, Edwin M. <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

Counsel:

Please see the attached letter.

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  
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March 30, 2019

Caroline P. Mackie  
*Partner*  
D: 919.783.1108  
F: 919.783.1075  
cmackie@poynerspruill.com

VIA EMAIL

Phillip J. Strach  
4208 Six Forks Road  
Suite 1100  
Raleigh, NC 27609

RE: *Common Cause v. Lewis*, 18CV14001 (N.C. Super.)

Dear Phil:

I write in response to your letter of March 26, 2019 concerning the North Carolina Democratic Party's objections and responses to Legislative Defendants' first set of interrogatories and requests for production of documents.

Your letter notes that NCDP did not begin producing documents on March 18. As you know, on March 18, we provided written objections and responses to the interrogatories and document requests on behalf of all Plaintiffs—NCDP, Common Cause, and the 37 individual Plaintiffs. Since then, we have commenced a rolling production of documents, and we have, to date, produced 11,295 pages of documents to you on behalf of the plaintiffs. Given the extraordinary breadth of your requests, we are in the process of reviewing tens of thousands of potentially responsive documents from NCDP, and, pursuant to my email to you of March 27, we are prepared to commence our rolling production of NCDP documents in response to your requests.

As you also know, Plaintiffs sent a proposed protective order to Legislative Defendants on March 14 to govern the production of confidential information. Having a protective order in place is of central concern to NCDP given the sensitive nature of the discovery you have requested. During the parties' March 15 meet and confer, you indicated that you were amenable to the protective order and would follow up with minor proposed edits. But you never followed up. On March 25, Plaintiffs contacted Legislative Defendants again inquiring about the status of the protective order and whether Legislative Defendants still intended to send edits. Again, you did not respond. On March 27, after you transmitted your letter, Plaintiffs followed up again regarding the protective order, explaining that once we reached an agreement on the protective order we would begin our rolling production of NCDP documents. As of today, we still do not have a signed consent protective order.

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Once we have the agreement of all parties to the consent protective order, our production on behalf of NCDP will continue on a rolling basis.

Your letter asks whether Plaintiffs will consent to a one-week delay of your expert reports. Plaintiffs do not consent to such delay. Legislative Defendants chose to wait until February 15 to serve any discovery requests in this case. Since receiving your requests, Plaintiffs have exercised extraordinary diligence to provide responses and will continue to do so. None of this provides any conceivable basis for any delay in the schedule. You claim that not having immediate access to NCDP documents will “significantly prejudice [y]our experts’ ability to prepare reports,” but you do not identify how NCDP documents will be relevant at all to your experts’ reports, and you certainly do not explain why your experts would need NCDP documents more than a month before their reports are due (on April 30). We note that, as of the date of this letter, Plaintiffs still have not received any substantive document production from Legislative Defendants, even though Plaintiffs’ expert reports are due on April 8. Nevertheless, if there are particular types of information that you wish NCDP to prioritize in its document production for purposes of your experts, we would be happy to discuss that during a meet and confer.

In response to the other issues raised in your letter:

1. Privilege Log. Pursuant to Wake County Superior Court Local Rule 5.1(d), we propose to meet and confer regarding the nature and scope of privilege logs for the case. Thereafter, NCDP will produce a privilege log identifying documents that have been withheld on the basis of privilege.
2. Specific Responses. We address the specific responses identified in your letter below.

**INTERROGATORY #1(d):** This interrogatory requests that NCDP (i) provide “the full legal name of any other entity with which [NCDP] shares board members, executive staff, and/or employees” and (ii) “identify these shared individuals and the positions they hold in each entity.” NCDP’s executive committee consists of over 600 members. It would be unduly burdensome for NCDP to identify, for each of these 600 members, the names of “any other entity” on which they serve as a board member, executive staff, or employee. The request is also not reasonably calculated to lead to the discovery of admissible evidence. The affiliations that NCDP’s board members, staff, or employees may have with other entities have no bearing on any issue in this matter. Nevertheless, we are willing to meet and confer to discuss potentially narrowing this interrogatory, to the extent you believe that it requests any information that is relevant here.

**INTERROGATORY #2(c):** Your only complaint about NCDP’s response to this interrogatory is that NCDP did not begin producing documents at the time it served its objections and responses. That issue is fully addressed above.

**INTERROGATORY #3:** Interrogatory #3(a) requests that NCDP identify “the members of [NCDP] living in each district challenged in this action.” NCDP’s members include every registered Democrat in North Carolina. Thus, NCDP has over 2 million members in North Carolina. The names of every registered Democrat in North Carolina are publicly and equally available to Legislative Defendants, and it would be unduly burdensome for NCDP to compile a list of such information. Subject to and without

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waiving NCDP's objections to this interrogatory, NCDP will provide a supplemental response that identifies the number of registered Democrats in each district challenged in this action.

With respect to Interrogatory #3(b), as we noted in our responses and objections, this request is unduly broad and not reasonably calculated to lead to the discovery of admissible evidence. Your letter proposes to narrow the request. We are willing to meet and confer with Legislative Defendants to discuss a narrowed request.

With respect to Interrogatory #3(d), your only complaint about NCDP's response to this interrogatory is that NCDP did not begin producing documents at the time it served its objections and responses. That issue is fully addressed above.

**INTERROGATORY #5:** Your letter fails to address our objections to this interrogatory. You do not explain why the information requested in interrogatory #5 concerning NCDP's responsibility for the payment of attorneys' fees is reasonably calculated to lead to the discovery of admissible evidence or to offer any basis for your position that the information is not privileged. We are willing to meet and confer if Legislative Defendants would like an opportunity to explain why they believe this information has any bearing on any of the claims and defenses in this case and is not privileged.

**INTERROGATORY #8:** Although statements made on social media and to the press are publicly available, NCDP will provide a supplemental response to this interrogatory to include statements made on social media and to the press.

**INTERROGATORY #11:** You request that NCDP provide contact information and job titles for Kimberly Reynolds and Wayne Goodwin. Ms. Reynolds is the Executive Director of NCDP. Mr. Goodwin is the Chairman of NCDP. Ms. Reynolds and Mr. Goodwin should be contacted through undersigned counsel at the address and telephone number listed above.

**INTERROGATORY #12:** Your only complaint about NCDP's response to this interrogatory is that NCDP did not begin producing documents at the time it served its objections and responses. That issue is fully addressed above.

**DOCUMENT REQUESTS NOS. 1, 3, 7, 8, 10-16:** Once again, your only complaint about the responses to these document requests is that NCDP did not begin producing documents at the time it served its objections and responses. That issue is fully addressed above.

**DOCUMENT REQUEST NO. 2:** You state that the documents requested (regarding or relating to the redrawing of district lines for the United States House of Representatives in North Carolina) are "related to similar information sought by Plaintiff," but you do not identify the "similar information" that Plaintiffs requested. Plaintiffs did not request "similar" information related to the drawing of congressional districts. We are nonetheless willing to meet and confer to discuss the purportedly "similar" information that Legislative Defendants believe Plaintiffs requested. This lawsuit does not challenge North Carolina's congressional districts, and searching for all documents relating to the drawing of those congressional districts is unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

March 30, 2019

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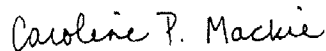
**DOCUMENT REQUEST NO. 4:** NCDP objected to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. We mistakenly interpreted the request to relate to legislative districts but now see that it requests documents “not involving districts” for the House or Senate. Our same objection to document request 2 now applies to document request 4.

**DOCUMENT REQUEST NOS. 3, 5, 6, 9:** NCDP is not presently aware of any documents in its possession, custody, or control that are responsive to these requests. Accordingly, NCDP has not withheld any responsive documents on the basis of NCDP’s objections or asserted privileges. As explained, NCDP’s document review is ongoing, and NCDP will supplement its response to these requests if and when it becomes aware of responsive documents.

\* \* \*

We would be pleased to meet and confer concerning the issues addressed above.

Very truly yours,



**Caroline P. Mackie**  
*Partner*

cc: All counsel of record

# **EXHIBIT 2**

NORTH CAROLINA

WAKE COUNTY

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.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
18-CVS-14001

**PLAINTIFF NORTH CAROLINA  
DEMOCRATIC PARTY'S  
OBJECTIONS AND RESPONSES TO  
LEGISLATIVE DEFENDANTS' FIRST  
SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

NOW COMES Plaintiff North Carolina Democratic Party ("Plaintiff" or "NCDP"), by and through the undersigned counsel, pursuant to Rules 26, 33, and 34 of the North Carolina Rules of Civil Procedure, and hereby objects and responds to Legislative Defendants' First Set of Interrogatories and First Set of Requests for Production as follows:

**GENERAL OBJECTIONS**

Plaintiff objects to each and every interrogatory or request insofar as they (i) can be construed to call for information protected by the attorney-client privilege and/or work product doctrine; (ii) seeks constitutionally protected, confidential or proprietary information; (iii) call for information outside Plaintiff's possession, custody or control within the meaning of Rule 26 of the North Carolina Rules of Civil Procedure; or (iv) seeks to impose obligations inconsistent with, or in excess of, the North Carolina Rules of Civil Procedure.

Pursuant to its obligations under Rules 26, 33, and 34 of the North Carolina Rules of Civil Procedure, Plaintiff has responded, except where objections are noted, with information in its custody and control, including information in the custody and control of its current agents and employees. Plaintiff adopts the general and specific objections and responses herein and further

objects to the interrogatories and requests to the extent they seek information and documents beyond its individual custody and control.

Plaintiff further objects to the interrogatories and requests to the extent they seek information or documents that are not reasonably calculated to lead to the discovery of admissible evidence, including but not limited to all interrogatories and requests seeking information and documents relating to the plans or drawing of the United States of House of Representatives districts, all interrogatories and requests seeking information and documents regarding pre-2011 matters, and all interrogatories and requests that would compel disclosure of political activities or affiliations in violation of the First Amendment. The First Amendment prohibits disclosure of an organization's member lists, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462-63 (1958); sources and uses of its funds, *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); and its internal plans, financial plans, strategies, polling data, and tactics. *Am. Fed'n of Labor & Cong. Of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 175-76 (D.C. Cir. 2003); *AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003); *Ohio Organizing Collaborative, et al. v. Husted, et al.*, No. 15-1802, Opinion and Order, ECF No. 69 (S.D. OH Nov. 12, 2015).

Subject to and without waiving the foregoing objections, which are specifically incorporated into each of the following responses, Plaintiff responds to Defendants' First Set of Interrogatories and Requests for Production of Documents as follows:

### INTERROGATORIES

#### INTERROGATORY NO. 1

For each of the Organizational Plaintiffs, please state or identify:

- (a) Your organization's full legal name and any other names (including acronyms, pseudonyms, or assumed names) that you have used in the past ten (10) years
- (b) The address at which you maintain your headquarters, principal place of business, or principal office in the State of North Carolina;

- (c) The addresses of any other offices, facilities, or locations used by you in the State of North Carolina;
- (d) The full legal name of any other entity with which you share board members, executive staff, and/or employees and identify these shared individuals and the positions they hold in each entity;
- (e) A brief description of all election-related activities that your organization, or its members, engage in on behalf of the organization;
- (f) A summary of all election-related activities that your organization engaged in related to any North Carolina Legislative race from the 2008 election cycle to the present;
- (g) The nature of any relationship your organization may have with the Democratic National Committee, the Democratic Congressional Campaign Committee, Organizing For Action, Emily's List, the Democracy Project II, the National Democratic Redistricting Committee, the National Democratic Redistricting Trust, the National Redistricting Action Fund, the Democratic Legislative Campaign Committee, Democracy North Carolina, North Carolina Policy Watch, the League of Women Voters, Blueprint NC, NC State Conference of the NAACP, the NC A. Phillip Randolph Institute, the Southern Coalition for Social Justice, or any other organization with whom you have communicated regarding redistricting, the drawing of legislative maps, targeting of legislative races, or supporting Democratic legislative candidates, including by raising funds, providing volunteers, or making in-kind contributions or independent expenditures from the 2008 election cycle to the present.

**RESPONSE:**

- (a) Democratic Executive Committee, North Carolina Democratic Party, NCDP, NC Democratic Party, State Democratic Executive Committee
- (b) 220 Hillsborough Street, Raleigh, North Carolina 27603
- (c) Plaintiff objects to this Interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this interrogatory seeks information that is not limited to a specific time frame; as such, Plaintiff has limited its response to this interrogatory to those addresses used by the NCDP within the past ten (10) years. Additionally, Plaintiff notes that though it has made its best effort using immediately available records with respect to this response, the addresses of all of its coordinated campaign offices used during 2008 and 2012 are not immediately ascertainable and that Plaintiff will seasonably supplement this response as such addresses become available. Plaintiff has included in its following response the coordinated campaign offices utilized by the NCDP in 2018, 2016, 2012, and 2008. Subject to and without waiving the foregoing objections, Plaintiff states as follows:

1520 West Blvd STE D Charlotte, NC 28208  
 520 N Spring St Winston-Salem, NC 27101  
 145 W Parris Ave #102 High Point, NC 27262  
 320 Copperfield Blvd NE Concord, NC 28025  
 400 W Main St #103 Durham, NC 27701  
 915 Kildaire Farm Rd #6 Cary, NC 27511  
 918 Halstead Blvd, Suite A-2, Halstead Plaza Elizabeth City NC 27909  
 5416 Raeford Rd Fayetteville, NC 28304



19 W. Hargett Street Raleigh, NC 27601  
2200 East Millbrook Road Raleigh, NC 27604  
122 North Main Street, Suite A Burlington, NC 27217  
704 Arendell Street Morehead City, NC 28557  
1612 Tate Boulevard Southeast Hickory, NC 28602  
1232 South Glenburnie Road New Bern, NC 28562  
3105 North Croatan Highway, Unit #30 Kill Devil Hills, NC 27948  
1345 Poplar Grove Road Boone, NC 28607  
3724 National Drive, Suite 250 Raleigh, NC  
631 East Garrison Blvd Gastonia, NC 28054  
1179 North Main Street Harnett County  
233 East Front Street Statesville, NC 28677  
5041 New Centre Drive Wilmington, NC 28403  
209 East Main Street Carrboro, NC 27510-2309  
711 Carthage Street Sanford, NC 27330  
301 North Queen Street Kinston, NC 28501  
715 Gum Branch Road Jacksonville, NC 28540  
657 Tiffany Blvd Rocky Mount, NC 27804  
320-B Copperfield Blvd, NE Concord, NC 28025  
915 Kildaire Farm Road, Suite 6 Cary, NC 27511  
118 North Church Street Asheboro, NC 27204  
507 North Elm Street Lumberton, NC 28358  
5304 Sunset Road, Suite H Charlotte, NC 28269  
5534 South Blvd Charlotte, NC 28217  
145 West Parris Avenue, Suite 102 High Point, NC 27262  
138 North Center Street Goldsboro, NC 27534  
216 W. Nash Street, Suite A Wilson, NC 27893  
2300 W. Meadowview Road Wrightsville, NC  
2050-C Eastgate Drive Greenville, NC 27858  
70 Woodfin Street Asheville, NC 28801  
520 North Spring Street Winston Salem, NC 27101  
101 S. Wilmington St., Raleigh, NC 27601  
1011 East Morehead St., Charlotte, NC 28204  
107 E 4th St. Tabor City, NC 28463  
107 Gum Branch Square, Jacksonville, NC 28540  
107 Merrimon Ave, Suite 310, Asheville, NC 28801  
107 N. Market Street, Washington, NC 27889  
107 W. Railroad Ave Chadburn, NC 28431  
109 E Church St, Laurinburg NC 28352  
11075 Old Lake Rd. Riegelwood, NC 28456  
1109 York Street, Gastonia, NC 28052  
112 N. Webb St., Selma, NC 24576  
112 W. Main Street, Durham, NC 27703  
112 West Broad Street, High Point, NC  
1128 Burke St, Winston Salem, NC 27101  
114 West Union Street, Morganton, NC 28655

117-A West Warren St. Shelby, NC 28677  
1183-B Lexington Ave, High Point NC 27262  
120 E. Innes Street, Salisbury NC 28144  
120 North Second Street, Albemarle, NC 28001  
121 E Innes Street, Salisbury, NC 28144  
121 N Main St. Louisburg, NC 27549  
122-A N. Main Street, Burlington, NC  
130 E. Morgan Street, Raleigh, NC 27601  
1300 Martin Luther King, Elizabethtown, NC 28337  
1302 39th street, Wilmington, NC  
132 S. Goldsboro Street, Wilson NC 27893  
138 N. Center Street, Goldsboro, NC  
142 E. Main Street, Forest City, NC 28043  
1420 Ol Ocean Highway, Bolivia, NC 28422  
1503 Buck Jones Rd, Cary NC 27511  
1520-C West Boulevard, Charlotte, NC 28208  
155 Mallard St. Kenansville, NC 28349  
15504 W. Highway 210 Rocky Point, NC 28445  
16112 Old Statesville Rd, Huntersville, NC 28078  
1626 East Franklin Ave, Gastonia, NC 28054  
1710 Owen Drive, Fayetteville, NC 28304  
1712 Owen Drive, Fayetteville, NC 28304  
175 W Pennsylvania Ave, Southern Pines, NC 28387  
1804 N. Patterson Ave, Winston Salem, NC 27105  
19 Everett Street, Bryson City, NC 28713  
1912 Dr. M.L. King Blvd, New Bern, NC 28560  
2001 Mount Harmony Church Road, Matthews NC 28104  
20462 Chartwell Center Dr. Unit B Cornelius, NC  
206 North Front Street, Warsaw, NC  
208 Sunset Avenue, Asheboro NC 27203-5610  
210 Haywood Rd, Asheville, NC 28806  
2100 Alison St Fairmont, NC 28340  
2109 I Colonial Plaza Mall, St. Andrew St., Tarboro, NC 27886  
215 E. Chatham, Cary, NC 27511  
215 N. Queen Street, Kinston NC 28501  
2175 Highway 172 Sneads Ferry, NC 28460  
220 Hillsborough St, Raleigh, NC 27603  
2200 Woodchuck Place Rd, Raleigh, NC 27610  
221 N Elm Street, Lumberton NC 28358  
223-E South Main Street, Lexington, NC 27292  
228 Franklin Street, Mount Airy, NC 27030  
228 West Acadia Ave Winston-Salem NC 27127  
229 N. Gregson St. Durham, NC 27701  
233 E Front St, Statesville, NC 28677  
237 Friendship, Chapel Hill Rd, Wake Forest, NC 27587  
24 S. Main Street Franklinton, NC 27525

2517 Sunset Ave, Rocky Mount, NC 27804  
2606 Raeford, Rd Fayetteville, NC 28303  
2709 Chapel Hill Road, Durham, NC 27709  
2773 NC Highway 55 Cary, NC 27519  
286 Haywood Square, Haywood Street, Waynesville, NC 28786  
3 N. Main Street, Belmont, NC 28012  
30 Church Street, S. Concord NC 28025  
300 Black Belt World Drive, Knightdale, NC 27545  
3020 Highwoods Blvd, Raleigh, NC 27604  
315 S. Salem Street, Suite 300, Apex NC 27502  
3191 Old Cullowhee Road, Cullowhee, NC 28723  
3215 Milton Rd, STE 236, Charlotte, NC 28215  
337 W. Rosemary Street, Chapel Hill, NC 27516  
34 Oleander Drive, Clayton, NC 27520  
343 Western St. Jacksonville, NC 28546  
3501 Capital Blvd, Suite 117, Raleigh NC 27604  
3600 Glenwood Ave, Suite 104, Raleigh NC 27612  
3604 Durham Chapel Hill #111 Blvd, Durham NC 27707  
3900 Gossett Street, Charlotte, NC 28208  
401 Oberlin Road, Suite 112, Raleigh, NC  
406 W. State St Black Mountain, NC 28711  
409 Roland Ave Surf City, NC 28445  
414 S. Evans Street, Greenville, NC 27858  
415 N. Broad Street, Winston-Salem, NC 27101  
427 South Hughes, Blvd, Elizabeth City, NC  
42-B Third Street, NW, Hickory, NC 28601  
4819 Emperor Blvd Suite 200, Durham NC 27703  
4B Consultant Place, Durham, NC 27707  
500 Mill St., Sylva, NC 28779  
500 S. Salisbury St, Raleigh, NC  
500 W. Fourth Street, Winston Salem 27101  
5000 N. Tryon Street, Charlotte, NC 28213  
51 West Boulevard, Burnsville, NC 28714  
519 W 19th Ave Gastonia NC 28052  
525 Maple Hill School Road, Maple Hill NC 28454  
53 St. Dunstons Rd Asheville, NC 28803  
582 Davidson Gateway Drive, Davidson, NC 28036  
600 St. Marys St. Raleigh, NC 27605  
614 Spartanburg Highway, Hendersonville, NC 28739  
6317 Angus Drive, Raleigh, NC 27616  
636 Court Street Jacksonville, NC 28540  
650 Franklin Square, Highlands Rd, Franklin, NC 28734  
674 Ocean Highway West, Suite 1, Supply, NC  
6903 E. Great Marsh Church Rd, St. Pauls, NC 28384  
700 N. Eugene Street, Greensboro, NC  
700 South Salisbury Street, Raleigh, NC

701 S Franklin St. Whiteville, NC 28471  
704 C Arendell St. Morehead City, NC 28557  
728 Central Avenue Charlotte, NC 28204  
825 Walnut Street, Suite 310, Cary NC 27513  
890 W. King Street, Suite 101, Boone, NC 28607  
9216 University City, Charlotte, NC 28213  
951 Old Fairview Rd, Asheville, NC  
9955 Highway 11 Willard, NC 28478  
Crowne Plaza, 400 S. Tryon St, Suite 500, Charlotte, NC 28202  
2509 Sunset Avenue, Rocky Mount, NC  
00100 Broad Street, 27565  
207 Tarboro St SW, Wilson, NC  
236 S. Lafayette St 1, Shelby, NC  
1208 Pollock Street, New Bern, NC  
125 W 5th Street, Lumberton, NC  
408 National Blvd Street A, Lexington, NC 2729226310  
1500 W Vernon Avenue, Kinston, NC  
128 W 5th street, Lumberton, NC  
806-810 SW 12th Street, Hickory NC  
101 City Hall Plaza, Durham, NC 27701  
401 E. Lakewood Ave, Durham, NC 27707  
1524 Elizabeth Ave, Charlotte, NC 28204  
1301 10th Avenue Lane SE, Hickory, NC 28602  
4401 Wrightsville Ave, Wilmington, NC  
435 Hurston Circle, Charlotte, NC 28208-4869  
38 Glen Cove, Dr, Arden, NC 28704-3219  
525 Woodvale Dr, Greensboro, NC 27410-5629  
1503 E Broad St, Elizabethtown, NC 28337-8895  
4333 W Church St, Farmville, NC 27828-1693  
122A N Main Street, Burlington, NC 27215  
2 Church Street, Canton, NC 28716  
2010 The Plaza, Charlotte, NC 28205  
307 S Broad Street, Edenton, NC 27932  
907 Hay Street, Suite 202, Fayetteville, NC 28305  
2300 West Meadowview Rd, Suite 110, Greensboro, NC 27407  
8600 Sam Furr Road, Unit 260, Huntersville, NC 28078  
2116 N Cedar Street, Lumberton, NC 28358  
118 S Person Street, Raleigh, NC 27601  
500 Wait Avenue, Unit 2, Wake Forest, NC 27587  
5041 New Centre Drive, Suite 111, Wilmington, NC 28403  
163 Stratford Court, Suite 130, Winston-Salem, NC 27103  
514 E Williams Street, Apex, NC 27502

- (d) Plaintiff objects to this Interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.
- (e) The North Carolina Democratic Party – by and through its members and its elected volunteer officers, its paid staff and volunteers, and collectively in association together as

the North Carolina Democratic Party – is engaged in a very broad number of election-related activities on behalf of the organization. These activities include:

- a. Organizing thousands of precincts statewide, and organizing each of North Carolina's 100 counties and 13 Congressional Districts
- b. Recruiting candidates for legislative, Congressional, and statewide offices in all three branches of government
- c. Fundraising for general operations and specific tasks and obligations of the North Carolina Democratic Party
- d. Strategizing on how best to organize, recruit, develop a message, encourage voter registration and voter turnout
- e. Developing the message(s) that the Party, its candidates, and Party members will share with the public and, more specifically, with prospective voters and the North Carolina public at-large whether an election year or not, and the actual sharing of that message through multiple means – in person, print, mailing, and other media
- f. Partnering with the political operations and campaigns of incumbent Democratic officials, when allowed by law or the NCDP Party Plan of Organization, and Democratic nominees for elected political office, and serving as an informational and data resource and sounding board for them and prospective Democratic candidates
- g. Contacting currently-registered Democrats and other voters who may or are interested in the message, mission, and candidates running for office as Democrats
- h. Inspiring and energizing members of our Party and others who are of like-mind who, even in one election cycle, may be inclined to vote for our candidates and our policy proposals.
- i. Encouraging voters – particularly those registered as Democrats and others who are inclined to support Democratic candidates and policy positions – to turn out on Election Day

(f) See response to Interrogatory No. 1(e) above.

(g) Plaintiff objects to this interrogatory as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this interrogatory seeks information regarding relationships and activities for a period for which records no longer exist and for a period beyond the memory of answering Plaintiff. Further, pursuant to Rule 33(c) of the North Carolina Rules of Civil Procedure, all funds, in-kind contributions, and independent expenditures can be derived or ascertained from business records equally available to all parties. To that end, those records can be found at [www.NCSBE.gov](http://www.NCSBE.gov) and/or [www.FEC.gov](http://www.FEC.gov). Plaintiff further objects to the extent that mandating disclosure of this information would violate the First Amendment. The First Amendment prohibits mandatory disclosure of an organization's member lists, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462–63 (1958); sources and uses of its funds, *Buckley v. Valeo*, 424 U.S. 1, 64–68 (1976); and its internal plans, financial plans, strategies, polling data, and tactics. *Am. Fed'n of Labor & Cong. Of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 175–76 (D.C. Cir. 2003); *AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003); *Ohio Organizing Collaborative, et*

*al. v. Husted, et al.*, No. 15-1802, Opinion and Order, ECF No. 69 (S.D. OH Nov. 12, 2015). See the responses to Request for Production No. 11 below.

- a. Subject to and without waiving the foregoing objections, the NCDP provides the following response for each organization identified:
  - i. Democratic National Committee – Pursuant to 52 USC § 30101(14), the Democratic National Committee is the national organization of the Democratic Party and as such is responsible for the day to day operation of the Democratic Party at the national level. The NCDP is the state level organization of the Democratic Party pursuant to 52 USC § 30101(15). Thus the DNC and NCDP actively support Democratic candidates for election at national and state levels.
  - ii. Democratic Congressional Campaign Committee – Plaintiff objects on the grounds that this lawsuit does not challenge any congressional districting plan, and thus this interrogatory is outside the scope of permissible discovery. The DCCC engages in work related to federal candidates, not state candidates, and thus is not relevant to this lawsuit.
  - iii. Organizing For Action – Upon information and belief, OFA has no relationship with the NCDP.
  - iv. Emily’s List – Upon information and belief, this answering Plaintiff has received contributions in one or more election cycles and its candidates have received support directly from Emily’s List. Emily’s List has not had a role or relationship with this answering Plaintiff regarding redistricting.
  - v. Democracy Project II – The Democracy Project II is a North Carolina not-for-profit corporation formed pursuant to Section 501(c)(4) of the Internal Revenue Code. Plaintiff is informed and believes that the Democracy Project II received financial support from the NCDP, which support can be found at [www.NCSBE.gov](http://www.NCSBE.gov).
  - vi. National Democratic Redistricting Committee – The Chairman of the NDRC, Eric Holder, spoke at NCDP events. Plaintiff is informed and believes that the National Democratic Redistricting PAC is affiliated with the National Democratic Redistricting Committee. The National Democratic Redistricting PAC made contributions for candidate support to NCDP.
  - vii. National Democratic Redistricting Trust – Upon information and belief, Plaintiff has no relationship with this organization. See the response above regarding the National Democratic Redistricting Committee.
  - viii. National Redistricting Action Fund – Upon information and belief, Plaintiff has no relationship with this organization. See the response regarding National Democratic Redistricting Committee.
  - ix. Democratic Legislative Campaign Committee – Upon information and belief, Plaintiff has no financial relationship with this organization. The DLCC maintains a staff of political directors that are available for consultation with state parties. In addition, from time to time, there is an exchange of data relative to matters other than redistricting between NCDP and DLCC.

- x. Democracy North Carolina – Upon information and belief, Plaintiff has no relationship with this organization.
- xi. North Carolina Policy Watch – Upon information and belief, Plaintiff has no relationship with this organization.
- xii. League of Women Voters – Upon information and belief, Plaintiff has no relationship with this organization.
- xiii. Blueprint NC – Upon information and belief, Plaintiff has no relationship with this organization.
- xiv. NC State Conference of the NAACP – Upon information and belief, Plaintiff has no relationship with this organization.
- xv. NC A. Phillip Randolph Institute – Upon information and belief, Plaintiff has no relationship with this organization.
- xvi. Southern Coalition for Social Justice – Upon information and belief, Plaintiff has no relationship with this organization.

## INTERROGATORY NO. 2

As to each of the North Carolina Legislative Districts identified in your Complaint, state the following, identifying to which district the response relates:

(a) All facts of which you are aware that support your claims in the Complaint or on which you intend to rely to show that any of the districts in the 2017 House Plan or the 2017 Senate Plan is an impermissible partisan gerrymander.

(b) Identify all persons with knowledge, including but not limited to, witnesses you intend to call as to each particular Legislative District to establish the facts listed under subpart (a). As to those individuals you intend to call as witnesses, provide a detailed summary of the substance and scope of their anticipated testimony, indicate to which district their anticipated testimony will relate, and identify and produce the documents they will refer to or use in their testimony;

(c) Identify and produce each document or portion of any document on which you intend to rely to establish the facts identified under subpart (a), identify to which particular district the document relates.

**RESPONSE:** Plaintiff objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Plaintiff further objects that the request to identify witnesses Plaintiff intends to call at trial, or documents Plaintiff intends to introduce as exhibits, is premature; Plaintiff will serve its witness and exhibit lists at the time specified in the stipulated scheduling order. Subject to and without waiving the foregoing objections, Plaintiff states as follows:

- (a) The facts on which Plaintiff relies in challenging the 2017 legislative maps, and districts contained in those maps, are set out in the complaint and amended complaint and will be supplemented at trial by the legislative record, by expert reports and testimony, and by

other evidence. By way of further evidence, Plaintiff intends to rely on the following to support its claims: legislative seats for which no candidate ran in elections from 2012-2018; campaign finance reports for the NCDP and legislative elections 2012-2018; 2012-2018 election results; and further fact and expert witness testimony regarding the harm sustained by the NCDP by the gerrymanders. Plaintiff reserves the right to supplement this response and rely on other additional evidence at trial.

- (b) Plaintiff objects to this interrogatory to the extent it seeks identification of the witnesses Plaintiff intends to call at trial. *King v. Koucouliotes*, 108 N.C. App. 751, 425 S.E.2d 462 (1993). Plaintiff will identify those witnesses at the appropriate time in accordance with the stipulated case management order. Subject to and without waiving this objection, Plaintiff identifies the following as persons with knowledge: Wayne Goodwin, other named Plaintiffs, Legislative Defendants, and members of the North Carolina General Assembly as of 2011 and 2017. Plaintiff will supplement this response in accordance with the stipulated case management order.
- (c) Pursuant to Rule 33(c) of the North Carolina Rules of Civil Procedure, the answer to this interrogatory may be derived from a review of Plaintiff's document production being served contemporaneously with these responses. To the extent this interrogatory requests the equivalent of a pre-trial exhibit list, it is premature; Plaintiff will provide an exhibit list at the appropriate time in accordance with the stipulated case management order.

### INTERROGATORY NO. 3

As to each North Carolina Legislative District identified in your Complaint, and for each Organizational Plaintiff, state the following:

- (a) Identify the members of your organization living in each district challenged in this action;
- (b) For your organization, list events, presentations, or other programs that your organization has held in each district challenged in this action since January 1, 2009;
- (c) Identify all facts and all documents on which you intend to rely to support your organization's standing with respect to each challenged district; and
- (d) Identify and produce any and all communications between your organization and its members in each district challenged in this action that relate or refer to the allegations in the Complaint.

**RESPONSE:** Plaintiff objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects that mandatory disclosure of this information would violate the First Amendment. The First Amendment prohibits mandatory disclosure of an organization's member lists, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462-63 (1958). Plaintiff further objects to the extent this interrogatory seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff states as follows:

- (a) Plaintiff has members residing in every legislative district in the State.



- (b) Plaintiff objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.
- (c) Plaintiff has members residing in every legislative district in the State. Plaintiff will produce documents consistent with the North Carolina Rules of Civil Procedure in response to requests for production. In addition, Plaintiff intends to rely on statements by House and Senate Redistricting Chairs and Committee members in Committee meetings since 2011; statements by Republican members of the General Assembly in floor debates since 2011; deposition and trial testimony in *Dickson v. Rucho* and *Covington v. State of North Carolina*; expert analysis and testimony; election results; election financing information; and testimony of individual plaintiffs. Plaintiff reserves the right to supplement this response and rely on other additional evidence at trial.
- (d) Pursuant to Rule 33(c) of the North Carolina Rules of Civil Procedure, the answer to this interrogatory may be derived from a review of Plaintiff's document production being served contemporaneously with these responses.

#### INTERROGATORY NO. 4

State whether your organization has drawn or created any alternative maps to the legislative plans enacted by the North Carolina General Assembly in either 2011 or 2017. If your organization has drawn or created such maps, identify each individual involved in the development of each map you created, the software used to draw or create each map, describe any criteria or guidelines you or your organization used to draw or create each map, and for each criteria or guideline explain why it was selected and how it was weighted.

**RESPONSE:** Plaintiff objects to the extent this interrogatory seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff has not drawn or created any alternative maps to the plans enacted by the North Carolina General Assembly in either 2011 or 2017.

#### INTERROGATORY NO. 5

Please describe your responsibility, if any, for the payment of any attorney's fees or costs incurred by your counsel or any attorney's fees or costs that might be awarded against you by the court in this lawsuit. If you are not responsible for such fees or costs, identify the persons or persons who are responsible for these fees and costs by stating the name and address for any such person or persons.

**RESPONSE:** Plaintiff objects to this interrogatory on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects on First Amendment grounds. The First Amendment prohibits mandatory disclosure of an organization's sources and uses of its funds, *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); and its financial plans. *Am. Fed'n of Labor & Cong. Of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 175-76 (D.C. Cir. 2003); *AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003); *Ohio Organizing Collaborative, et al. v. Husted, et al.*, No. 15-1802, Opinion and Order, ECF No. 69 (S.D. OH Nov. 12, 2015).

## INTERROGATORY NO. 6

Explain in detail how your organization came to be a plaintiff in this lawsuit. Include in your answer whether you were asked to be a plaintiff by another person or persons, the identity of any such person or persons, the organization or employer with which that person was employed or affiliated, the date of any such conversations, and the substance of any such conversations.

**RESPONSE:** Plaintiff objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this interrogatory seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff learned of the possibility of joining this lawsuit through counsel. After consulting with counsel, Plaintiff decided to join the lawsuit as a plaintiff.

## INTERROGATORY NO. 7

List any legal proceedings in the last 10 years where your organization has been a party or someone from your organization has testified on behalf of the organization as a witness. In doing so, please provide the caption of the case and file number, the court or administrative agency in which any case identified above was filed, a short explanation of the substance of the case, the nature of your involvement (i.e., party or witness), and current status of the proceedings.

**RESPONSE:** Plaintiff objects that this interrogatory is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The NCDP notes that though it has made its best effort to include every legal proceeding in which the NCDP has been a party or witness over the past ten (10) years, a comprehensive list of such proceedings is not readily ascertainable and that the NCDP will seasonably supplement its response if any additional information becomes available. Subject to the foregoing objections, the NCDP states as follows:

*Adriadn Ortega v. NCDP and David P. Parker, individually, 12-CVS-8457*

*Buck Newton v. Swindell, Swindell for Senate Committee, and NCDP, 10-CVS-1847*

Claim by Adriadn Ortega against the State Democratic Executive Committee to the NC Department of Commerce, Division of Employment Security, Appeals Decision No. VII-B-95978

*Common Cause v. Rucho, 1:13-cv-1026*

Complaint by Andrew Baker to the Equal Employment Opportunity Commission ("EEOC") against the NCDP, December 23, 2009

Complaint by Mary Beth Yates to the North Carolina Department of Justice, Consumer Protection Division against the NCDP, File No. 1212634, October 2012

Complaint by the NCDP Executive Director Andrew Whalen to the NC State Board of Elections (“SBOE”) against the North Carolina Republican Party, North Carolina Republican Executive Committee, North Carolina Republican Senate Committee, Senator Phil Berger, Fred J. Smith, Jr. and Riverwood Golf and Athletic Club, LLC, April 2010

Complaint by the NCDP Executive Director Casey M. Mann to the SBOE against Americans for Prosperity Foundation, September 2014

Complaint by the NCDP Executive Director Casey M. Mann to the Federal Elections Commission (“FEC”) against Carolina Rising, Inc., October 2014

Complaint by the NCDP Executive Director Casey M. Mann to the SBOE against Phil Berger, Bill Cook, Chad Barefoot, the North Carolina Republican Party, the Philip E. Berger Committee, the Committee to Elect Bill Cook, and the Committee to Elect Chad Barefoot, October 2014

Complaint by the NCDP Executive Director Casey M. Mann to the SBOE against Tom Murry, Tom Murry for NC House and NC Healthy Leadership Committee, September 2014

Complaint by the NCDP Executive Director Casey M. Mann to the FEC against Walker4NC, October 21, 2014

Complaint by the NCDP Executive Director Kimberly Reynolds to the SBOE against the NC Republican Party, the Republican Governors Association, the RGA Right Direction PAC, and the Pat McCrory Committee, October 29, 2016

Complaint by the NC Republican Party against the NCDP to the FEC, Case No. MUR 6599

Complaint by NC Republican Party Chairman Tom Fetzer to the SBOE against the NCDP and the Bev Perdue Committee, October 15, 2009

Complaint by the NC Republican Party Executive Director Scott Laster to the SBOE against the NCDP, October 2012

Complaint by the NC Republican Party Executive Director Scott Laster to the SBOE against the NCDP, June 2012

Complaint by the NC Republican Party Chief of Staff Mike Rusher against the NCDP to the FEC, Case No. MUR 6732, RR 14L-24

*Don Davis, in his individual capacity, and Don Davis for NC Senate, a political committee v. Louis Pate Election Committee, a political committee, and NC Republican Executive Committee, a political committee, 11-CVS-24*

*Francis X. Deluca, v. NC State Board of Elections; Kim Westbrook Strach, in her official capacity as Executive Director of the State Board; and A. Grant Whitney, Rhonda K. Amoroso, Joshua D. Malcolm, James Baker, and Maja Krickler, in their official capacities as members of the State Board of Elections, and League of Women Voters of NC, and NC State Conference of the National Association for the advancement of colored people, 5:16-CV-913*

Friends of Joe Sam Queen, a political committee v. Ralph Hise for NC Senate, a political committee, and NC Republican Executive Committee, a political committee, 11-CVS-89

Investigation of Allegations of Possible Violations of Election Laws, Including but not limited to, Illegal Contributions and Inaccurate Reporting in Campaign Finance Reports by the Mike Easley Committee and the North Carolina Democratic Party, January 14, 2010

*Katz, et al. v. DNC Services Corp. d/b/a Democratic National Committee, et al., 2:16-cv-05800-CDJ*

*Kimberley Hendrix and Pitt County Republican Party v. Democratic Legislative Campaign Committee and DLCC North Carolina PAC, 08-CVS-3177*

*LaRoque v. Braxton, Van Braxton for NC House, and NCDP, 10-CVS-1071*

*Margaret Dickson, in her individual capacity; and Committee to Elect Margaret Dickson, a political committee v. Wesley Meredith for Senate, a political committee; and NC Republican Executive Committee, a political committee, 11-CVS-821*

*NCDP v. NC Republican Party, Donald J. Trump for President, Inc., Roger J. Stone, Jr. and Stop the Steal Inc., 1:16-cv-01288*

*NCDP v. Kim Strach, in her official capacity as the Executive Director of the NC State Board of Elections, 16-CV-12821*

*NCDP v. Berger, 1:17-cv-1113 (M.D.N.C.)*

*Triangle Data Basics, Inc., vs. NC Democratic Party, 14-CVS-7198*

## **INTERROGATORY NO. 8**

Identify each person or group, other than any attorney retained to represent you in this action, with whom you have communicated regarding the allegations or claims made in this lawsuit. For each communication you identify, state the date, time, place, and method of each communication, the substance of the communication, and identify any documents that you provided to or exchanged with each such person or group regarding the allegations or claims made in this lawsuit.

**RESPONSE:** Plaintiff objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, other than its lawyers, Plaintiff has not communicated with anyone other than its lawyers about the allegations or claims made in this lawsuit.

#### **INTERROGATORY NO. 9**

Identify all persons or entities, other than your attorneys, from whom you have obtained any written or oral statement, report, memorandum, or testimony (including via email or text message) concerning the allegations contained in your Complaint or concerning your answers to these Interrogatories or the attached Requests for Production of Documents.

**RESPONSE:** Plaintiff objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Plaintiff states as follows:

To Plaintiff's knowledge, no person other than Plaintiff's lawyers has provided Plaintiff any written or oral statement, report, memorandum or testimony concerning the allegations in the Complaint, the answers to these interrogatories, or the responses to the document requests.

#### **INTERROGATORY NO. 10**

Identify every public hearing regarding the 2011 or 2017 redistricting for the North Carolina House of Representatives or North Carolina Senate that a representative attended on behalf of your organization, and for each such hearing, state or describe the following:

- (a) the date(s) and location(s) of the hearing(s) you attended;
- (b) whether a representative provided any testimony or comments during the hearing(s) on behalf of the organization; and
- (c) any documents that the representative took to the hearing or that the representative received or created before or during the hearing, or that the representative relied upon for any testimony provided during the hearing.

**RESPONSE:** To the best of Plaintiff's knowledge, Plaintiff did not send anyone as a representative on behalf of the North Carolina Democratic Party. To the extent any representatives of the NCDP did appear, the records, including sign-in sheets, for those hearings are in the possession of Legislative Defendants.

#### **INTERROGATORY NO. 11**

Except for your attorney, identify each person who participated in the preparation, factual investigation, and/or drafting of your responses to these Interrogatories or who you consulted, relied upon, or otherwise received information from in preparing your answers to these Interrogatories and specify each Interrogatory for which he/she participated in the preparation,

factual investigation, and/or drafting of your responses or was consulted, relied upon, or otherwise constituted a source of information.

**RESPONSE:** Kimberly Reynolds, Wayne Goodwin. Ms. Reynolds and Mr. Goodwin assisted counsel in the preparation of all responses to these interrogatories.

**INTERROGATORY NO. 12**

Identify each person with whom your organization has communicated from January 1, 2009 to the present regarding redistricting, the drawing of legislative maps, supporting Democratic legislative candidates or targeting of legislative races for financial, in-kind, or volunteer support of Democratic candidates. Identify the date of each communication, the persons involved in the communication, and the substance of each communications. To the extent any of these communications are in writing, you may produce documents reflecting such communications pursuant to N.C. R. Civ. P. 33(c).

**RESPONSE:** Plaintiff objects to this interrogatory as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this interrogatory seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Plaintiff further objects to the extent that mandatory disclosure of this information would violate the First Amendment. The First Amendment prohibits mandatory disclosure of an organization's member lists, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462-63 (1958); sources and uses of its funds, *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); and its internal plans, financial plans, strategies, polling data, and tactics. *Am. Fed'n of Labor & Cong. Of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 175-76 (D.C. Cir. 2003); *AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003); *Ohio Organizing Collaborative, et al. v. Husted, et al.*, No. 15-1802, Opinion and Order, ECF No. 69 (S.D. OH Nov. 12, 2015). Subject to and without waiving the foregoing objections and pursuant to Rule 33(c) of the North Carolina Rules of Civil Procedure, the answer to this interrogatory may be derived from a review of Plaintiff's document production.

## REQUESTS FOR PRODUCTION

### **REQUEST NO. 1**

All documents in your possession, custody, or control regarding or relating to the redrawing of district lines for the North Carolina House of Representatives or the North Carolina Senate from January 1, 2009 to the present. This request includes, but is not limited to, copies of any maps, statistical reports, analyses, or other documents prepared by you or on your behalf or received by you regarding or relating to the redrawing of district lines for the North Carolina House of Representatives or the North Carolina Senate.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

### **REQUEST NO. 2**

All documents in your possession, custody, or control regarding or relating to the redrawing of district lines for the United States House of Representatives in North Carolina from January 1, 2009 to the present. This request includes but is not limited to copies of any maps, draft maps, statistical reports, analyses, or other documents prepared by you or on your behalf or received by you regarding or relating to the redrawing of district lines for the United States House of Representatives in North Carolina.

**RESPONSE:** Plaintiff objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. This lawsuit does not challenge the districting plan for the U.S. House of Representatives.

### **REQUEST NO. 3**

All documents in your possession, custody, or control relating to the involvement of the Democratic Legislative Campaign Committee, the Democratic National Committee, the Democratic Congressional Campaign Committee, Organizing For Action, Emily's List, the Democracy Project II, the National Democratic Redistricting Committee, the National Democratic Redistricting Trust, the National Redistricting Action Fund, the Democratic Legislative Campaign Committee, Democracy North Carolina, North Carolina Policy Watch, the League of Women Voters, Blueprint NC, NC State Conference of the NAACP, the NC A. Phillip Randolph Institute, the Southern Coalition for Social Justice, or Project "Advantage 2020," in the redrawing or proposed redrawing of district lines for the North Carolina House of Representatives or the North Carolina Senate from January 1, 2009 to the present.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product

protection, or any other legal privilege. Subject to and without waiving the foregoing objections, to the best of the NCDP's knowledge, after consultation among staff and a review of files, the NCDP has found no documents in its possession, custody, or control from any of the listed entities that relate to the location or boundaries of the legislative districts contained in the 2011 and 2017 redistricting plans.

**REQUEST NO. 4**

All documents in your possession, custody, or control relating to the involvement of the Democratic Legislative Campaign Committee, the Democratic National Committee, the Democratic Congressional Campaign Committee, Organizing For Action, Emily's List, the Democracy Project II, the National Democratic Redistricting Committee, the National Democratic Redistricting Trust, the National Redistricting Action Fund, the Democratic Legislative Campaign Committee, Democracy North Carolina, North Carolina Policy Watch, the League of Women Voters, Blueprint NC, NC State Conference of the NAACP, the NC A. Phillip Randolph Institute, the Southern Coalition for Social Justice, or Project "Advantage 2020," in the redrawing of any district lines not involving districts for the North Carolina House of Representatives or North Carolina Senate in North Carolina from January 1, 2009 to the present.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

**REQUEST NO. 5**

All documents in your possession, custody, or control regarding or relating to any consultant or other person or organization who provided assistance, whether paid or unpaid, relating to the redistricting or proposed redistricting of the North Carolina House of Representatives or North Carolina Senate from January 1, 2009 to the present, including but not limited to: (a) contracts and agreements, whether oral or written, and documents reflecting such contracts and agreements; (b) communications with such persons relating to any maps drawn or prepared or redistricting in general; (c) reports (draft or final) or analyses prepared regarding or relating to such reports or analyses; (d) information shared with such persons to assist the person in their work related to preparing or analyzing any maps; and (e) invoices or payments submitted to/from such persons.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff does not have any documents responsive to this request.

**REQUEST NO. 6**

All documents regarding or relating to the consideration of any factors in creating any draft or final versions of any map for the North Carolina House of Representatives or North Carolina



Senate from January 1, 2009 to the present, including but not limited to: (a) compactness; (b) contiguity; (c) population equality; (d) incumbency protection; (e) competitiveness; (f) preservation of communities of interest; (g) likelihood of election outcomes; (h) past election outcomes, either collectively or singularly; (i) Voting Rights Act compliance; (j) location of political campaign contributors; (k) location of the home of any candidate or potential candidate for the North Carolina General Assembly; and (l) location of any county, municipal, or other political boundary.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff does not have any documents responsive to this request.

#### **REQUEST NO. 7**

All documents in your possession, custody, or control reflecting communications with any member, group of members, or prospective members of the North Carolina General Assembly regarding or relating to HB 927, SB 691, HB, 937, and/or SB 455.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

#### **REQUEST NO. 8**

All documents in your possession, custody, or control reflecting communications with any person or entity regarding the redistricting of the North Carolina House of Representatives and North Carolina Senate from January 1, 2009 to present, including but not limited to David Parker, Randy Voller, Patsy Keever, Wayne Goodwin, Scott Falmlen, Morgan Jackson, Joe Hackney, Martin Nesbitt, Jr., Larry Hall, Deborah K. Ross, Rick Glazier, Ray Rapp, Michael Wray, Dan Blue, Darren Jackson, Robert Reives, II, Bob Hall, Bob Philips, Ken Eudy, Fred Allen, Nexus Strategies, the Democratic Legislative Campaign Committee, the Democratic National Committee, the Democratic Congressional Campaign Committee, Organizing For Action, Emily's List, the Democracy Project II, the National Democratic Redistricting Committee, the National Democratic Redistricting Trust, the National Redistricting Action Fund, the Democratic Legislative Campaign Committee, Democracy North Carolina, North Carolina Policy Watch, the League of Women Voters, Blueprint NC, NC State Conference of the NAACP, the NC A. Phillip Randolph Institute, the Southern Coalition for Social Justice, or Project "Advantage 2020," or any of the plaintiffs in this action.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections,

Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

**REQUEST NO. 9**

All documents in your possession, custody, or control regarding or relating to any conference, meeting, or training concerning the topic of redistricting that occurred from January 1, 2009 to present, including but not limited to (a) agendas; (b) minutes or notes; (c) any documents provided to participants prior to, at or after the event; (d) invitations; (e) invoices or requests for reimbursement; (f) participation lists; and (g) communications relating to the meeting, conference, or training.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff does not have any documents responsive to this request.

**REQUEST NO. 10**

All documents in your possession, custody, or control reflecting communications with any member or group of members of the North Carolina General Assembly, regarding or relating to any reasons why any member or group of members of the North Carolina General Assembly voted in favor or of against HB 927, SB 691, HB, 937, and/or SB 455, SB 2, and SB 453.

**RESPONSE:** Plaintiff objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving the foregoing objections, Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

Plaintiff further notes that the unanimous opposition of the Democratic members of the General Assembly to HB 927, SB 691, HB 937, SB 455, SB 2, and SB 453 is reflected by their votes opposing each of these bills. The reasons for their unanimous opposition to each of these bills are spread on the pages of the transcripts of proceedings in committee and on the floor regarding each of these bills, which were prepared and are maintained by the Legislative Defendants.

**REQUEST NO. 11**

All documents in your possession, custody, or control regarding or relating to payments or reimbursements to/from the Democratic Legislative Campaign Committee, the Democratic National Committee, the Democratic Congressional Campaign Committee, Organizing For Action, Emily's List, the Democracy Project II, the National Democratic Redistricting Committee, the National Democratic Redistricting Trust, the National Redistricting Action Fund, the Democratic Legislative Campaign Committee, Democracy North Carolina, North Carolina Policy Watch, the League of Women Voters, Blueprint NC, NC State Conference of the NAACP, the NC A. Phillip Randolph Institute, the Southern Coalition for Social Justice, or

Project “Advantage 2020,” or any of the plaintiffs in this action, related to redistricting in North Carolina from January 1, 2009 to the present, or regarding or relating to the support of Democratic legislative candidates in North Carolina including financial, in-kind, or volunteer support.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent that mandatory disclosure of this information would violate the First Amendment. The First Amendment prohibits mandatory disclosure of an organization’s member lists, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462–63 (1958); sources and uses of its funds, *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); and its internal plans, financial plans, strategies, polling data, and tactics. *Am. Fed’n of Labor & Cong. Of Indus. Orgs. v. Fed. Election Comm’n*, 333 F.3d 168, 175-76 (D.C. Cir. 2003); *AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003); *Ohio Organizing Collaborative, et al. v. Husted, et al.*, No. 15-1802, Opinion and Order, ECF No. 69 (S.D. OH Nov. 12, 2015). Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving these objections, Plaintiff will produce campaign finance reports and other reports showing NCDP support for legislative candidates.

#### **REQUEST NO. 12**

All documents in your possession, custody, or control containing District-by-District Analytics Reports, DNC Support Scores, and/or similar or related analyses for any North Carolina Legislative District including any such documents received from or exchanged with any of the entities listed in Request No. 11 from January 1, 2009 to the present.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent that mandatory disclosure of this information would violate the First Amendment. The First Amendment prohibits mandatory disclosure of an organization’s member lists, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462–63 (1958); sources and uses of its funds, *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); and its internal plans, financial plans, strategies, polling data, and tactics. *Am. Fed’n of Labor & Cong. Of Indus. Orgs. v. Fed. Election Comm’n*, 333 F.3d 168, 175-76 (D.C. Cir. 2003); *AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003); *Ohio Organizing Collaborative, et al. v. Husted, et al.*, No. 15-1802, Opinion and Order, ECF No. 69 (S.D. OH Nov. 12, 2015). Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving these objections, Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

#### **REQUEST NO. 13**

All documents in your possession, custody, or control regarding or relating to the allegations in your Complaint.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product

protection, or any other legal privilege. Subject to any without waiving the foregoing objections, Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

**REQUEST NO. 14**

All documents in your possession, custody, or control referenced in your responses to Legislative Defendants' and State of North Carolina's First Set of Interrogatories to the Organizational Plaintiffs.

**RESPONSE:** Plaintiff objects to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Subject to any without waiving the foregoing objections, Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

**REQUEST NO. 15:**

All documents in your possession, custody, or control relating to the involvement of the Democratic Legislative Campaign Committee, the Democratic National Committee, the Democratic Congressional Campaign Committee, Organizing For Action, Emily's List, the Democracy Project II, the National Democratic Redistricting Committee, the National Democratic Redistricting Trust, the National Redistricting Action Fund, the Democratic Legislative Campaign Committee, Democracy North Carolina, North Carolina Policy Watch, the League of Women Voters, Blueprint NC, NC State Conference of the NAACP, the NC A. Phillip Randolph Institute, the Southern Coalition for Social Justice, or Project "Advantage 2020," and any other organization concerning the support of Democratic legislative candidates, the targeting of legislative races involving Democratic candidates for financial, in-kind, or volunteer support.

**RESPONSE:** Plaintiff objects that this request is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent that mandatory disclosure of this information would violate the First Amendment. The First Amendment prohibits mandatory disclosure of an organization's member lists, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462-63 (1958); sources and uses of its funds, *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); and its internal plans, financial plans, strategies, polling data, and tactics. *Am. Fed'n of Labor & Cong. Of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 175-76 (D.C. Cir. 2003); *AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003); *Ohio Organizing Collaborative, et al. v. Husted, et al.*, No. 15-1802, Opinion and Order, ECF No. 69 (S.D. OH Nov. 12, 2015). Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving these objections, Plaintiff will produce campaign finance reports and other reports showing NCDP support for legislative candidates.

**REQUEST NO. 16:**

All documents in your possession, custody, or control regarding or relating to projected or possible results of elections conducted under the enacted North Carolina Legislative maps, including but not limited to (a) any projection of results in elections from January 1, 2009 through the present; and (b) a comparison between projected results and actual results in elections from January 1, 2009 through the present.

**RESPONSE:** Plaintiff objects that this request is overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff further objects to the extent that mandatory disclosure of this information would violate the First Amendment. The First Amendment prohibits mandatory disclosure of an organization's member lists, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462-63 (1958); sources and uses of its funds, *Buckley v. Valeo*, 424 U.S. 1, 64-68 (1976); and its internal plans, financial plans, strategies, polling data, and tactics. *Am. Fed'n of Labor & Cong. Of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 175-76 (D.C. Cir. 2003); *AFL-CIO v. FEC*, 333 F.3d 168, 177 (D.C. Cir. 2003); *Ohio Organizing Collaborative, et al. v. Husted, et al.*, No. 15-1802, Opinion and Order, ECF No. 69 (S.D. OH Nov. 12, 2015). Plaintiff further objects to the extent this request seeks information protected by the attorney-client privilege, work product protection, or any other legal privilege. Subject to and without waiving these objections, Plaintiff will produce non-privileged, responsive documents within its possession, custody, and control.

Respectfully submitted this the 18th day of March, 2019.

**POYNER SPRUILL LLP**

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*\* Admitted pro hac vice*

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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*Counsel for Legislative Defendants*

This the 18th day of March, 2019.

  
Caroline P. Mackie

# **EXHIBIT 3**



## Riggins, Alyssa

---

**From:** Jones, Stanton <Stanton.Jones@arnoldporter.com>  
**Sent:** Wednesday, May 01, 2019 9:43 AM  
**To:** McKnight, Michael D.; Christine McCaffrey; Strach, Phillip J.; rraile@bakerlaw.com; Nate Pencook; Riggins, Alyssa; amajmundar@ncdoj.gov; pcox@ncdoj.gov; sbrennan@ncdoj.gov; John Branch; tstanley@bakerlaw.com; mbraden@bakerlaw.com  
**Cc:** ABranch@perkinscoie.com; cmackie@poynerspruill.com; Gersch, David P.; espeas@poynerspruill.com; melias@perkinscoie.com; AKhanna@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Robinson, John  
**Subject:** RE: Common Cause v. Lewis - testimony of individual plaintiffs [ODNSS-OGL.026753.000016]  
**Attachments:** NCDP Document Issues Listing.xlsx

Michael:

I'm writing in response to your email below and also your separate April 24 email attaching a list of documents for which Legislative Defendants raised questions about formatting and the like.

First, on the formatting issues raised in your April 24 email, attached is a revised version of the spreadsheet you sent in which we've added a column setting out our response with respect to each document you identified. Although the overwhelming majority of the issues you identified involve simply the omission of nonsubstantive images like logos, we will be reproducing certain of these documents, as reflected in the attached spreadsheet, and you should receive an e-mail later today with a link to download those documents. Please let us know if you have any further questions.

Second, on your questions below about "support scores" and the VAN database, NCDP has already produced an enormous volume of materials responsive to your requests, at an extraordinary cost, including extensive information district-level analysis of the districts in question. As just one example, see the District Snapshots that were included in NCDP's April 1 production, which you referenced in your April 23 email below. As we have explained, the VAN database is not in NCDP's possession, custody, control, and NCDP does not have legal authority to turn over "support scores" from that database. Any further discovery concerning "support scores" would be disproportionate to the needs of the case. It further appears to be a fishing expedition for sensitive political intelligence, divorced from the issues in this case.

Finally, on your question about "campaign finance reports," the spreadsheet compilation that we produced (and that you reference below) is the only document in NCDP's possession, custody, or control that NCDP currently intends to rely on at trial in relation to campaign finance. If that changes, we of course will promptly supplement NCDP's production. As you know, exhibit lists are due July 1.

Regards,  
Stanton

**From:** McKnight, Michael D. <michael.mcknight@ogletree.com>  
**Sent:** Friday, April 26, 2019 11:20 PM  
**To:** Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Christine McCaffrey <CMcCaffrey@shanahanlawgroup.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; rraile@bakerlaw.com; Nate Pencook <NPencook@shanahanlawgroup.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; amajmundar@ncdoj.gov; pcox@ncdoj.gov; sbrennan@ncdoj.gov; John Branch <JBranch@shanahanlawgroup.com>; tstanley@bakerlaw.com; mbraden@bakerlaw.com; Robinson, John <John.Robinson@arnoldporter.com>  
**Cc:** zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; cmackie@poynerspruill.com; Gersch, David P.

<David.Gersch@arnoldporter.com>; espeas@poynerspruill.com; melias@perkinscoie.com;  
z.zz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>  
**Subject:** Common Cause v. Lewis - testimony of individual plaintiffs [ODNSS-UGL.026753.000016]

External E-mail

Counsel:

I've conferred with our team and wanted to follow up on a few items from our meet-and-confer call Wednesday. There were two categories of documents that were not resolved and we wanted to make sure that we understood your position on these items and wanted to make another attempt to resolve these issues before seeking assistance from the court:

First, we discussed whether the NCDP has "support scores" or similar analytics for the legislative districts at issue in this case. It is our understanding that this information may be contained within a system called the Voter Activation Network (VAN) or VoteBuilder to which the NCDP and other allied organizations and their members are provided access to assist with voter outreach, targeting, and persuasion efforts. It is also our understanding that voters within a district are assigned a "score" and that such scores may place the voter into one of several categories such as "Strong Democrat," "Strong Republican," or "Persuadable." We also believe that these scores can be totaled on a district-by-district basis so that it is possible to determine how many voters in a particular district fall into each of the available categories. Examples of publicly available information about these scores that has been released by Democratic Party organizations in other states and that turn up by internet search are attached. Reference to these scores is also made in the "First Day Getting Started Guide" that is distributed to new NCDP staff members advising them of key terms to know for their work. (See Bates Number NCDP 4645).

On our call, we raised the issue that the NCDP's discovery responses failed to state whether such scores exist. You responded that neither such scores nor the VAN itself was used by the NCDP for "redistricting purposes" or words to that effect. We do not believe that statement is accurate as there are multiple emails in the NCDP's production that suggest otherwise, including an email chain with the subject line "Redistricting" in which use of the VAN is discussed. At your request, I have attached this and other emails for your review.

Even if the NCDP had not used the VAN system or "support scores" for "redistricting purposes," this information is a proper subject of discovery under the North Carolina Rules of Civil Procedure. In Paragraph 8 of the Amended Complaint, the NCDP lists three purposes which include the ability to "persuade voters to cast their ballots for" candidates who are members of the Democratic Party and contends that the challenged districts "frustrate and burden NCDP's ability to achieve its essential purposes and to carry out its core functions." Plaintiffs' experts have made similar contentions in their reports and plaintiffs' refusal to provide this information—or even look for it—has impaired the ability of legislative defendants' experts to respond to these contentions. "Support scores" or other metrics used by the NCDP with respect to the legislative districts at issue in this litigation that reflect on the contentions made by the plaintiffs and their experts in this case about the districts are clearly within the proper scope of discovery.

In our discussion of the NCDP's use of these scores on our call Wednesday, we were told that providing these scores would violate certain contractual obligations that the NCDP had. To be clear, we are not asking that the NCDP turn over "support scores" assigned to individual voters but instead are asking that the NCDP produce any information that it has obtained with respect to the specific districts at issue. That would include documents that would reflect on the number of voters within any of the legislative districts at issue in this case who received a particular support score, fell within a range or category of support scores, and any related analysis or definitions of categories or ranges of support scores.

The list of search terms provided below shows that the NCDP has not searched for the term "support score" or other similar analytics for purposes of its responses to Legislative Defendants' discovery requests despite a specific request for this information. When asked on our call whether the NCDP would agree to run such a search, you stated that it would not. We ask you to reconsider that position, to run a search for the term "support score," and to provide any responsive

documents. If you can think of an alternative approach that would allow you to determine whether any such responsive documents exist, we are open to considering it. If you will not agree to run a search for and produce any documents that may contain the requested information, we intend to file a motion to compel with the court seeking this information next week.

Second, we discussed that the NCDP stated in its interrogatory responses that it intends to rely upon "campaign finance reports for the NCDP and legislative elections 2012-2018" to support its claims in this case but produced only a single spreadsheet containing a compilation of campaign contributions and expenditures from the House and Senate races in the 2018 election cycle. It is our understanding from Wednesday's call that this is the only document in the NCDP's possession, custody, or control that supports the NCDP's claims in this regard. Please confirm that our understanding is correct. It is also our understanding that the NCDP may create additional exhibits for trial based upon other campaign finance reports that have been filed. To the extent the NCDP intends to do this, we request that the NCDP amend its interrogatory response to specifically identify any such "campaign finance reports" on which it may rely to create these additional exhibits. Please state whether you will agree to do this.

We appreciate your attention to these issues.

-Michael

**Michael D. McKnight | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

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**From:** Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)>

**Sent:** Wednesday, April 24, 2019 10:53 AM

**To:** McKnight, Michael D. <[Michael.McKnight@ogletreedeakins.com](mailto:Michael.McKnight@ogletreedeakins.com)>; Jones, Stanton

<[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Christine

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<[John.Robinson@arnoldporter.com](mailto:John.Robinson@arnoldporter.com)>

**Cc:** [ABranch@perkinscoie.com](mailto:ABranch@perkinscoie.com); [cmackie@poynerspruill.com](mailto:cmackie@poynerspruill.com); Gersch, David P. <[David.Gersch@arnoldporter.com](mailto:David.Gersch@arnoldporter.com)>;

[espeas@poynerspruill.com](mailto:espeas@poynerspruill.com); [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com)

**Subject:** RE: Common Cause v. Lewis - testimony of individual plaintiffs [ODNSS-OGL.026753.000016]

Michael,

On our meet and confer this morning, you requested a list of search terms that NCDP used to collect potentially responsive documents. Below is a list of the search terms used:

1. Redistricting
2. Gerrymandering
3. Gerrymander
4. HB 927
5. SB 691
6. HB 937
7. SB 455
8. SB 453
9. SB 2
10. House Plan

11. Senate Plan

Best,  
Dan

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Senior Associate

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**From:** McKnight, Michael D. <[michael.mcknight@ogletree.com](mailto:michael.mcknight@ogletree.com)>

**Sent:** Tuesday, April 23, 2019 4:16 PM

**To:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Christine McCaffrey <[CMcCaffrey@shanahanlawgroup.com](mailto:CMcCaffrey@shanahanlawgroup.com)>; Strach, Phillip J. <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; [rraille@bakerlaw.com](mailto:raille@bakerlaw.com); Nate Pencook <[NPencook@shanahanlawgroup.com](mailto:NPencook@shanahanlawgroup.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedeakins.com](mailto:Alyssa.Riggins@ogletreedeakins.com)>; [amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov); [pcox@ncdoj.gov](mailto:pcox@ncdoj.gov); [sbrennan@ncdoj.gov](mailto:sbrennan@ncdoj.gov); John Branch <[JBranch@shanahanlawgroup.com](mailto:JBranch@shanahanlawgroup.com)>; [tstanley@bakerlaw.com](mailto:tstanley@bakerlaw.com); [mbraden@bakerlaw.com](mailto:mbraden@bakerlaw.com)

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**Subject:** RE: Common Cause v. Lewis - testimony of individual plaintiffs [ODNSS-OGL.026753.000016]

External E-mail

Stanton,

Thanks for circulating the dial-in number. Here is a list of items with respect to the NCDP's production we'd like to discuss:

1. We received "District Snapshots" from the 2016 and 2018 election cycles but noticed that the documents did not go back further than those dates. Does the NCDP have these documents from previous election cycles? If so, will it produce them? If not, why not?
2. There are multiple references in the NCDP's documents to a program called "VAN" which I understand may stand for Voter Activation Network. It is not clear why type of information is contained within VAN but it is our understanding that, for certain electoral districts, the NCDP has access to "Support Scores" for districts within NC and for voters within those districts. Those scores were specifically requested in RFP No. 12 but we cannot tell from the NCDP's response whether those scores exist for the legislative districts at issue in this case and, if so, whether they are being withheld on the basis of some privilege. Do "Support Scores" or some similar analytics exist for the districts at issue in this case or the voters who live in those districts? If so, will the NCDP agree to produce that information? If not, why not?
3. In response to Interrogatory No. 3, the NCDP has stated that it intends to rely upon "campaign finance reports for the NCDP and legislative elections 2012-2018" to support its claims in this case. In addition, RFP Nos. 11, 14, and 15 request production of relevant campaign finance documents. To date, we have not received any such "campaign finance reports" related to either the NCDP or "legislative elections" generally. There are a number of such reports from that time period and it is unlikely that you intend to rely upon all of them. The general reference to these reports is not responsive to defendants' interrogatory. Will NCDP agree to produce copies of any campaign finance reports on which it intends to rely to support its claims in this case? If not, why not?

4. We have noticed that there are a number of documents in the NCDP's production where original maps were in color but were produced in black and white, where portions of emails or text messages are missing, or where images are missing entirely. We are in the process of putting together a list of documents where this is the case and will provide that list once completed. Will NCDP agree to reproduce these documents after receiving the list?
5. Finally, there are certain documents in the NCDP's fourth production that were marked "Withheld for Privilege" but we cannot determine from the production whether these documents were included in the privilege log that was served earlier. Were these documents included on the privilege log and, if not, when can we expect to receive an updated privilege log that includes these documents?

Thanks,

Michael

**Michael D. McKnight | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

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[michael.mcknight@ogletree.com](mailto:michael.mcknight@ogletree.com) | [www.ogletree.com](http://www.ogletree.com) | [Bio](#)

**From:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>

**Sent:** Tuesday, April 23, 2019 2:44 PM

**To:** McKnight, Michael D. <[Michael.McKnight@ogletreedekins.com](mailto:Michael.McKnight@ogletreedekins.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Christine McCaffrey <[CMcCaffrey@shanahanlawgroup.com](mailto:CMcCaffrey@shanahanlawgroup.com)>; Strach, Phillip J. <[Phil.Strach@ogletreedekins.com](mailto:Phil.Strach@ogletreedekins.com)>; [rraile@bakerlaw.com](mailto:rraile@bakerlaw.com); Nate Pencook <[NPencook@shanahanlawgroup.com](mailto:NPencook@shanahanlawgroup.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedekins.com](mailto:Alyssa.Riggins@ogletreedekins.com)>; [amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov); [pcox@ncdoj.gov](mailto:pcox@ncdoj.gov); [sbrennan@ncdoj.gov](mailto:sbrennan@ncdoj.gov); John Branch <[JBranch@shanahanlawgroup.com](mailto:JBranch@shanahanlawgroup.com)>; [tstanley@bakerlaw.com](mailto:tstanley@bakerlaw.com); [mbraden@bakerlaw.com](mailto:mbraden@bakerlaw.com)

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**Subject:** RE: Common Cause v. Lewis - testimony of individual plaintiffs [ODNSS-OGL.026753.000016]

Michael et al.:

Let's use this dial-in for our meet and confer tomorrow at 10am: 866-802-1366, passcode 73918062#.

The meet and confer is unlikely to be productive unless you send us in advance a list of topics you'd like to discuss. Will you send that list shortly today?

Regards,  
Stanton

**From:** McKnight, Michael D. <[michael.mcknight@ogletree.com](mailto:michael.mcknight@ogletree.com)>

**Sent:** Saturday, April 20, 2019 5:32 PM

**To:** Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Christine McCaffrey <[CMcCaffrey@shanahanlawgroup.com](mailto:CMcCaffrey@shanahanlawgroup.com)>; Strach, Phillip J. <[Phil.Strach@ogletreedekins.com](mailto:Phil.Strach@ogletreedekins.com)>; [rraile@bakerlaw.com](mailto:rraile@bakerlaw.com); Nate Pencook <[NPencook@shanahanlawgroup.com](mailto:NPencook@shanahanlawgroup.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedekins.com](mailto:Alyssa.Riggins@ogletreedekins.com)>; [amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov); [pcox@ncdoj.gov](mailto:pcox@ncdoj.gov); [sbrennan@ncdoj.gov](mailto:sbrennan@ncdoj.gov); John Branch <[JBranch@shanahanlawgroup.com](mailto:JBranch@shanahanlawgroup.com)>; [tstanley@bakerlaw.com](mailto:tstanley@bakerlaw.com); [mbraden@bakerlaw.com](mailto:mbraden@bakerlaw.com)

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[zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com) <[AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com)>

**Subject:** RE: Common Cause v. Lewis - testimony of individual plaintiffs [ODNSS-OGL.026753.000016]

Let's aim for 10 a.m. Wednesday if that will work for everyone. We're still reviewing the production but will get you a list of topics next week.

Thanks,

Michael

**Michael D. McKnight | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

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**From:** Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>

**Sent:** Friday, April 19, 2019 4:54 PM

**To:** McKnight, Michael D. <[Michael.McKnight@ogletreedekins.com](mailto:Michael.McKnight@ogletreedekins.com)>; Christine McCaffrey <[CMcCaffrey@shanahanlawgroup.com](mailto:CMcCaffrey@shanahanlawgroup.com)>; Strach, Phillip J. <[Phil.Strach@ogletreedekins.com](mailto:Phil.Strach@ogletreedekins.com)>; [raille@bakerlaw.com](mailto:raille@bakerlaw.com); Nate Pencook <[NPencook@shanahanlawgroup.com](mailto:NPencook@shanahanlawgroup.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedekins.com](mailto:Alyssa.Riggins@ogletreedekins.com)>; [amajmudar@ncdoj.gov](mailto:amajmudar@ncdoj.gov); [pcox@ncdoj.gov](mailto:pcox@ncdoj.gov); [sbrennan@ncdoj.gov](mailto:sbrennan@ncdoj.gov); John Branch <[JBranch@shanahanlawgroup.com](mailto:JBranch@shanahanlawgroup.com)>; [tstanley@bakerlaw.com](mailto:tstanley@bakerlaw.com); [mbraden@bakerlaw.com](mailto:mbraden@bakerlaw.com)

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**Subject:** RE: Common Cause v. Lewis - testimony of individual plaintiffs [ODNSS-OGL.026753.000016]

Michael:

We'll get back to you with some potential deposition dates for the organizational plaintiffs, and we will also send you a draft of the sort of affidavit that we have in mind for the individual plaintiffs.

As for a meet-and-confer on the NCDP production, we can be available on Monday afternoon after 2pm or generally on Wednesday before 4pm; could you propose some potential times? Can you also please provide a list of topics you intend to discuss so that we can be prepared?

Best,  
Elisabeth

---

Elisabeth S. Theodore

Partner

Arnold & Porter

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**From:** McKnight, Michael D. <[michael.mcknight@ogletree.com](mailto:michael.mcknight@ogletree.com)>

**Sent:** Thursday, April 18, 2019 1:07 PM

**To:** Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Christine McCaffrey <CMcCaffrey@shanahanlawgroup.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; rraile@bakerlaw.com; Nate Pencook <NPencook@shanahanlawgroup.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; amajmundar@ncdoj.gov; pcox@ncdoj.gov; sbrennan@ncdoj.gov; John Branch <JBranch@shanahanlawgroup.com>; tstanley@bakerlaw.com; mbraden@bakerlaw.com  
**Cc:** Jones, Stanton <Stanton.Jones@arnoldporter.com>; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; cmackie@poynerspruill.com; Gersch, David P. <David.Gersch@arnoldporter.com>; espeas@poynerspruill.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>  
**Subject:** RE: Common Cause v. Lewis - testimony of individual plaintiffs [ODNSS-OGL.026753.000016]

Elisabeth,

The Legislative Defendants intend to depose both of the organizational plaintiffs and some, but not all, of the individual plaintiffs. At this point, due to the rolling productions by the plaintiffs and the fact that we have not been able to review all of the documents from all of the plaintiffs, it has been difficult for us to determine who among the individual plaintiffs we need to depose. Since you have now represented that all responsive documents have been produced, we will work with the Intervenor-Defendants to identify the specific individual plaintiffs we'd like to depose and provide you with a single list as soon as possible next week.

If you all have some tentative dates in early May on which the organizational plaintiffs can be available for depositions, we will go ahead and issue 30(b)(6) notices for those organizations. Although we are still reviewing the latest round of documents produced by them, it appears we will likely need to schedule a meet-and-confer early next if possible with respect to the NCDP's production. Please let us know your availability for that.

Finally, with respect to your proposal regarding the presentation of trial testimony by some of the individual plaintiffs via affidavit rather than live testimony, the Legislative Defendants would be open to considering such an approach. It would be helpful to see a draft affidavit so that we can make sure we fully understand the testimony you intend to offer with respect to those individuals. Additionally, the Legislative Defendants may be able to narrow the list of individual plaintiffs who they intend to depose if you could identify those individual plaintiffs whose trial testimony will be limited to only those topics described in your email below.

Thanks,

Michael

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**Subject:** Common Cause v. Lewis - testimony of individual plaintiffs

Phil, John, and Paul:

Looking ahead to the deadline for fact discovery, do Legislative Defendants, Intervenor Defendants, or State Defendants intend to notice the depositions of all 37 individual plaintiffs? If you do, given the complex scheduling issues that will arise, we think it would be in everyone's interest to begin as early as possible to get those depositions on the calendar, even if the plaintiffs are not actually deposed until May.

Relatedly, however, we wanted to reach out in advance to see if the parties could come to an agreement that might obviate the need to depose all the individual plaintiffs, which would be very expensive and time-consuming for all sides. We doubt that the Court will want us to put on live testimony from all 37 individual plaintiffs at trial; as you know, in prior North Carolina gerrymandering trials, not every plaintiff has testified; and we think live testimony from all 37 would waste the parties' and the court's time and cause substantial and unnecessary expense.

Would you be amenable to an agreement permitting us to introduce testimony from the individual plaintiffs through affidavits (or stipulations), rather than live? The affidavits would aver to the plaintiff's name, age, address, basic biographical information, districts, voting history, and preference for electing Democratic legislators and a Democratic General Assembly. We would then call a few plaintiffs live at trial, but not all 37.

Please let us know whether you would consent to such a proposal. We would be happy to discuss this further at a meet and confer.

Best,  
Elisabeth

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Elisabeth S. Theodore  
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