

NORTH CAROLINA

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

WAKE COUNTY

COMMON CAUSE, et al.,

2019 JUN 21 P 3:36

WAKE CO., C.S.C.
Plaintiffs,

v.

BY _____

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

**DEFENDANT-INTERVENORS'
MOTION TO EXCLUDE SOCIAL
MEDIA EVIDENCE**

Defendants.

NOW COME Defendant-Intervenors Adrain Arnett, Carolyn Elmore, Cathy Fanslau, Connor Groce, Reginald Reid, Aubrey Woodard, and Ben York (“Intervenors”), and hereby respectfully move this Court for the entry of an order excluding any and all evidence, references to evidence, testimony, or argument relating to comments and photographs that were posted on Reginald Reid’s (“Mr. Reid”) social media accounts pursuant to Rules 402 and 403 of the North Carolina Rules of Evidence. In support of this motion, Intervenors provide the following:

I. Background

Intervenors have reason to believe Plaintiffs may seek to introduce evidence from Mr. Reid’s social media accounts that is wholly unrelated to redistricting. During Plaintiffs’ May 7, 2019 deposition of Mr. Reid, Plaintiffs ambushed Mr. Reid with several prior social media posts relating, inter alia, to his personal opinions about the national Democratic Party. Reid Dep. at 40:16–56:24.¹ Plaintiffs include substantial portions of the discussion regarding Mr. Reid’s social media posts in their deposition designations, to which Intervenors have objected. Any and all evidence from Mr. Reid’s social media posts not directly discussing state

¹ Relevant portions of Mr. Reid’s deposition transcript and corresponding exhibits are attached hereto as **Exhibit A**.

legislative redistricting, the state legislative maps, or gerrymandering of the state legislative maps should be excluded because they are irrelevant, and any possible probative value is substantially outweighed by the danger of unfair prejudice.

II. Reginald Reid's social media posts do not concern redistricting, are irrelevant, and therefore should be excluded.

“Evidence which is not relevant is not admissible.” N.C. Gen. Stat. § 8C-1, Rule 402 (2017). Relevant evidence is defined as “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Id.* at Rule 401. This Court may exclude evidence that is irrelevant or unduly prejudicial prior to trial. *State v. Roache*, 358 N.C. 243, 284, 595 S.E.2d 381, 408 (2004).

Mr. Reid's social media posts tend to discuss his opinions on national issues using not just even-tempered rhetoric, but also sarcasm, humor, and occasionally shocking language and graphics. While these posts may discuss national issues and politics in general, they are not relevant to the issues in this case because they do not reference redistricting. *See generally State v. Coen*, 78 N.C. App. 778, 780–81, 338 S.E.2d 784, 786 (1986) (excluding evidence that has no logical tendency to prove a fact at issue in the case). Further, the posts do not make any harm Intervenors have suffered or will suffer any more or less probable—at best, they simply relate to Mr. Reid's political preferences. *See id.* (holding testimony as to the amount of rent victim was paying for her apartment had no logical tendency to prove that the shower in her apartment worked). Accordingly, Mr. Reid's social media posts are irrelevant and should be excluded.

III. Even if relevant, the danger of unfair prejudice substantially outweighs the minimal probative value of Reid’s social media posts.

Rule 403 of the North Carolina Rules of Evidence gives the Court discretion to exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury. *See State v. Mason*, 315 N.C. 724, 731, 340 S.E.2d 430, 434–35 (1986) (citing N.C. Gen. Stat. § 8C-1, Rule 403). Unfair prejudice is defined as the “undue tendency to suggest decision on improper basis, commonly, though not necessarily, an emotional one.” *Id.* (citation omitted). Evidence used with the sole aim of exciting prejudice or sympathy is properly excluded under Rule 403. *See State v. Campbell*, 359 N.C. 644, 675–75, 617 S.E.2d 1, 20 (2005) (citation omitted).

Arguably, Mr. Reid’s social media posts might be probative of his positions on certain political issues (although to the extent they are unrelated to redistricting, this is again barely relevant at best). However, there are ways of eliciting testimony regarding Mr. Reid’s political preferences that are significantly less prejudicial than presenting him with these social media posts: e.g., through questioning regarding his political affiliation, activities, voting habits, and his previous candidacies for public offices. Moreover, if used for impeachment purposes, focusing on these social media posts will needlessly attach undue weight to immaterial facts by giving Plaintiffs a soapbox to stand up on and say what they think Mr. Reid’s views are on topics which are, at best, remotely related to the issues in this case. *See Browning v. Carolina Power & Light Co.*, 114 N.C. App. 229, 332–33, 441 S.E.2d 607, 610 (1994), *aff’d mem.*, 340 N.C. 254, 456 S.E.2d 307 (1995) (holding testimony regarding liquor bottles in witness’ purse was substantially more prejudicial than probative when used for impeachment purposes). Such attempts to discredit Mr. Reid through his social media posts would become a time-consuming exercise in distinguishing political satire from fact

that would bring this Court no closer to a resolution of the material issues at hand. Given the available alternatives, the danger of unfair prejudice substantially outweighs the probative value of admitting Mr. Reid's social media posts, and therefore they should be excluded.

CONCLUSION

WHEREFORE, in light of the foregoing, Intervenor respectfully request this Court enter an order excluding any and all evidence, references to evidence, testimony, or argument relating to a posts and photographs on Reginald Reid's social media accounts. Intervenor further request that the order encompass opening statement, closing argument, and otherwise during the presentation of the case by all parties.

This the 21st day of June 2019.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing: DEFENDANT-INTERVENORS' MOTION TO EXCLUDE SOCIAL MEDIA EVIDENCE upon all parties to this matter via email to the below listed email addresses as follows:

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STATE OF NORTH CAROLINA
COUNTY OF WAKE

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

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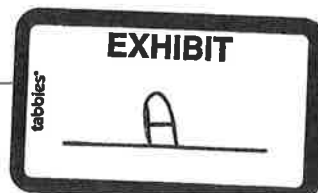
DEPOSITION OF
REGINALD REID

10:22 A.M.

TUESDAY, MAY 7, 2019

SHANAHAN LAW GROUP
7501 FALLS OF NEUSE ROAD, SUITE 200
RALEIGH, NORTH CAROLINA

BY: LISA A. WHEELER, RPR, CRR



1 to why the NRCC would pay for your legal fees
2 in a lawsuit that relates to solely state
3 House and state Senate districts, not
4 congressional districts?

5 A. No.

6 MR. BRANCH: Objection.

7 BY MR. JACOBSON:

8 Q. In any event, given that the NRCC has chosen
9 to fund your legal fees, they've chosen for
10 you to be a representative for them in this
11 case; right?

12 MR. BRANCH: Objection. That's -- you
13 can answer.

14 THE WITNESS: Okay.

15 A. Okay. All right. Yeah.

16 Q. Mr. Reid, do you believe that the Democratic
17 Party is the modern-day Nazi Party?

18 MR. BRANCH: Objection.

19 A. I believe the Democratic Party is the same
20 it's always been, just got a different face
21 to it.

22 Q. Do you believe that they're the modern-day
23 Nazi Party?

24 MR. BRANCH: Objection.

25 A. I believe they're the same face it's always

1 had. I believe that they're just as racist
2 as they've always been -- racist and bigoted
3 and hateful as they've always been.

4 Q. Sir, please just answer my question.

5 A. I'm answering your question.

6 Q. Do you -- yes or no, do you believe they're
7 the modern-day Nazi Party?

8 MR. BRANCH: Objection.

9 A. They're the [sic] racist and bigoted as
10 they've always been.

11 Q. Does that make them the modern-day Nazi
12 Party?

13 A. I think they're the racist --

14 MR. BRANCH: Objection.

15 A. -- and bigoted as they've always been.

16 Q. Sir, have you ever publicly conveyed a
17 message that the Democratic Party is the
18 modern-day Nazi Party?

19 MR. BRANCH: Objection.

20 A. I may have. I mean, they're National
21 Socialists so probably, yeah. They've got
22 identity politics and big government so,
23 yeah. Hitler was Austrian -- Hitler wasn't
24 German, he was Austrian, and he was a
25 Socialist so, yeah.

1 Q. And so where -- where do you think you
2 conveyed that message?

3 A. Probably on Facebook, e-mail.

4 Q. I'm going to show you what's been marked as
5 Exhibit 2.

6 (REID EXHIBIT 2 was marked for
7 identification.)

8 BY MR. JACOBSON:

9 Q. Sir, this is your Facebook page; is that
10 correct?

11 A. Yeah. Yeah. I --

12 Q. And this -- this is a post that you posted on
13 April 16th, 2019, several weeks ago; is that
14 right?

15 A. Yes, sir. Yes, sir. That'd be me.

16 Q. And this -- the top of this post it says, the
17 new logo for the Democratic Party; is that
18 right?

19 A. Yeah.

20 Q. And then immediate under -- immediately under
21 that there's a -- a donkey; is that right?

22 A. Yeah. That's the party. That's the --
23 that's the Democrat Party symbol.

24 Q. And the -- the donkey is wearing a swastika;
25 is that right?

1 A. Yeah.

2 Q. And the swastika is a symbol of the Nazi
3 Party?

4 A. It's actually eastern -- it's actually a
5 eastern -- eastern mysticism symbol. It's
6 the opposite, but, yeah, some people
7 associate it with Nazi Party but, yeah.

8 Q. Co- -- in common sort of understanding that
9 the swastika is associated with the Nazi
10 Party; is that right?

11 A. That's what some people associate it with
12 but, yeah.

13 Q. And then immediately under the donkey wearing
14 a swastika it says, Socialism, anti-America,
15 anti-Jews/Israel, anti-2nd Amendment,
16 pro-eugenics, pro-hate; is that right?

17 A. That's it.

18 Q. And those terms are meant to refer to the
19 Democratic Party?

20 A. Yes, sir.

21 MR. BRANCH: Objection.

22 BY MR. JACOBSON:

23 Q. And then immediately under that it says,
24 quote, modern-day Nazi Party, correct?

25 A. Yes, sir.

1 Q. And that's meant to refer to the Democratic
2 Party?

3 A. Yes, sir.

4 MR. BRANCH: Objection.

5 BY MR. JACOBSON:

6 Q. Sir, where did you get this image from?

7 MR. BRANCH: Objection.

8 A. Got it probably off of Facebook somewhere.

9 Q. Why did you post it?

10 A. Like I say, the modern Democratic Party
11 hasn't changed. They're still the same old
12 Klansmen in suits they've always been.
13 They're bigoted, hateful, in- --
14 infanticidal. All they see is people's skin
15 color. They judge the world by the -- the
16 Crayola box. They also -- I also -- I also
17 have a chance to put pro-gun. Origin of gun
18 control is to disarm African-Americans after
19 the Civil War. I could -- should also put
20 pro-gun control on that one.

21 Q. So you -- so you agree with the sentiments in
22 this post?

23 A. Yes.

24 MR. BRANCH: Objection.

25 BY MR. JACOBSON:

1 Q. You stand by this post?

2 A. Yeah.

3 MR. BRANCH: Objection.

4 BY MR. JACOBSON:

5 Q. Is there anything that this post doesn't
6 capture about your views about the Democratic
7 Party being reflective of the Nazi Party?

8 A. Like I say -- like I --

9 MR. BRANCH: Objection.

10 A. -- say, I'm -- like I say, it's -- I didn't
11 put gun control and I should have put
12 abortion. I should have put Planned --
13 origin of Planned Parenthood up here.

14 Q. Other than the Democratic Party --

15 A. Uh-huh.

16 Q. -- have you posted any content comparing
17 other modern-day Nazi groups -- other
18 modern-day Nazi group -- other modern-day
19 groups with Nazis?

20 MR. BRANCH: Objection.

21 A. May have.

22 Q. Which ones? Which groups do you think you've
23 compared to Nazis?

24 MR. BRANCH: Objection.

25 A. I'm not sure. I post a lot of stuff on

1 Facebook. If you show me, it'll probably
2 bring it back to my remembrance.

3 Q. How about homosexuals?

4 A. Yeah. I think the LGBT movement is very --
5 very idealogically totalitarian, absolutely,
6 100 percent.

7 Q. So you believe that the LGBT movement --

8 A. I think it's very --

9 Q. -- is a --

10 THE REPORTER: I -- I need you -- one
11 at a time.

12 THE WITNESS: Sorry.

13 BY MR. JACOBSON:

14 Q. You believe that the LGBT movement is akin to
15 Naziism?

16 A. I think that -- I think the LGT --

17 MR. BRANCH: Objection.

18 A. I think the movement is very totalitarian.

19 (REID EXHIBIT 3 was marked for
20 identification.)

21 BY MR. JACOBSON:

22 Q. Sir, I'm going to show you what's been marked
23 as Exhibit 3, which is another Facebook post
24 of yours.

25 A. Oh, that one.

1 Q. And, sir, this was -- this was posted -- this
2 is -- I should just ask, this is your
3 Facebook page again, correct?

4 A. Yes, sir. I personally made that post.

5 Q. You personally made this image?

6 A. I personally made that, yes, sir.

7 Q. And you posted this on April 10th?

8 A. Yes, sir.

9 Q. And why did you make this image?

10 A. Because it's true.

11 Q. So let's just take the image one at a time.
12 So on the -- the image has three flags; is
13 that right?

14 A. Uh-huh. Yes, sir.

15 Q. And the three flags are the Nazi flag?

16 A. Uh-huh.

17 Q. The flag of the former Soviet Union?

18 A. Uh-huh.

19 Q. And then the rainbow flag --

20 A. Yes, sir.

21 Q. -- is that right? And the rain- --

22 A. That's it.

23 Q. And the rainbow flag is affiliated with the
24 LGBT movement?

25 A. Okay. That's it. I think it speaks for

1 itself.

2 Q. And underneath the rainbow flag -- underneath
3 all three flags it says, quote, flags of
4 total- -- totalitarian ideologies, correct?

5 A. Yes, sir.

6 Q. So why did you post this?

7 A. Because it's true. I think it speaks for
8 itself.

9 Q. Why do you believe that homosexuality is a
10 totalitarian ideology akin to Naziism?

11 A. I didn't say --

12 MR. BRANCH: Objection.

13 A. I didn't say homosexuality was. I said the
14 movement was.

15 Q. Why do you believe that the LGBT movement is
16 a totalitarian ideology akin to Naziism?

17 A. Because if they can make you believe that the
18 winner of the 1976 men's decathlon is a
19 woman, they can make you believe anything.
20 That's straight up totalitarian propaganda.

21 Q. How is that totalitarian propaganda?

22 A. Really?

23 Q. Sir, how is that totalitarian propaganda?

24 A. The 1976 winner of the men's decathlon is a
25 woman. That doesn't --

1 Q. You have no further explanation of how that's
2 a totalitarian --

3 A. That doesn't make --

4 Q. -- ideology?

5 A. Some stuff --

6 THE REPORTER: One at a time.

7 THE WITNESS: Sorry.

8 A. I mean, I can't -- I don't know what to tell
9 you, man. Some stuff -- some stuff speaks
10 for itself. I don't --

11 Q. And you --

12 A. I don't know what to tell you.

13 Q. You believe that it's a totalitarian ideology
14 that's akin to Naziism and Communism; is that
15 right?

16 MR. BRANCH: Objection.

17 A. Yeah, it's to- -- yeah, I think it's
18 totalitarian ideology, absolutely. I think
19 the movement's -- I think the movement's
20 totalitarian.

21 Q. Do you believe it poses a -- a danger akin to
22 Naziism or Communism?

23 MR. BRANCH: Objection.

24 A. I think it's going to re- --

25 THE WITNESS: I have to answer that?

1 MR. BRANCH: (Nods head).

2 THE WITNESS: Okay.

3 A. I think it's -- I think it's in the process
4 of redefining this country and its culture,
5 redefining what it means to be a human being.

6 Q. How does it redefine what it means to be a
7 human being?

8 A. Human beings reproduce sexually and human
9 beings -- human beings have male/female
10 organs, XY chromosome, XX -- X chromosome.

11 Q. So -- so you're not disputing that your
12 belief is that homosex- -- sorry, the LGBT
13 movement is a totalitarian ideology that
14 poses a similar danger to Naziism and
15 Communism?

16 MR. BRANCH: Objection.

17 A. And there was a book published in the early
18 '90s called the -- The Pink Swastika.

19 Q. Just to clarify, Mr. Reid, are you disputing
20 that homosex- -- the LGBT movement is a
21 totalitarian ideology that --

22 A. I'm not dispute -- I'm not disputing that at
23 all.

24 MR. BRANCH: You've got -- Reggie, hold
25 on. Take a deep breath. You got to let him

1 finish his question --

2 THE WITNESS: Okay.

3 MR. BRANCH: -- before you testify. I
4 mean, you...

5 BY MR. JACOBSON:

6 Q. Are you dis- -- are you disputing that you
7 believe that total- -- that hom- -- that the
8 LGBT movement is a totalitarian ideology that
9 poses a similar danger as Naziism?

10 MR. BRANCH: Objection.

11 BY MR. JACOBSON:

12 Q. You may answer.

13 MR. BRANCH: I mean, you can answer the
14 question.

15 THE WITNESS: Okay.

16 A. Yeah. I -- like I say, I'm not disputing
17 that, no, sir.

18 Q. Okay.

19 A. I think it's totalitarian ideology like the
20 flag says.

21 Q. And you stand by this post?

22 A. I do.

23 Q. Is there anything else you want to tell me
24 about your beliefs about the LGBT movement?

25 A. No, sir.

1 whether you live with more Democratic voters
2 or Republican voters?

3 A. I didn't -- I don't choose where I live
4 because -- because of the Democratic Party
5 makeup. Party makeup, that's not why I chose
6 where to live.

7 Q. All else equal, if I give you two choices,
8 your -- you could live in a district that has
9 more Republican voters or that has more
10 Democratic voters, which would you prefer?

11 MR. BRANCH: Objection.

12 A. That's not a -- that wouldn't be a issue.
13 That's not really a issue why I do stuff. I
14 mean, that wouldn't be an issue.

15 Q. Please just answer my question, sir.

16 A. I'm answering your question. It wouldn't be
17 an issue. That's not -- that's not a
18 calculus to calculate where I live. That's
19 not the calculus.

20 Q. Sir, you -- you stated moments ago that you
21 believe the Democratic Party is the
22 modern-day Nazi Party, right?

23 A. Yeah.

24 MR. BRANCH: Objection.

25 BY MR. JACOBSON:

The new logo for the Democratic Party.

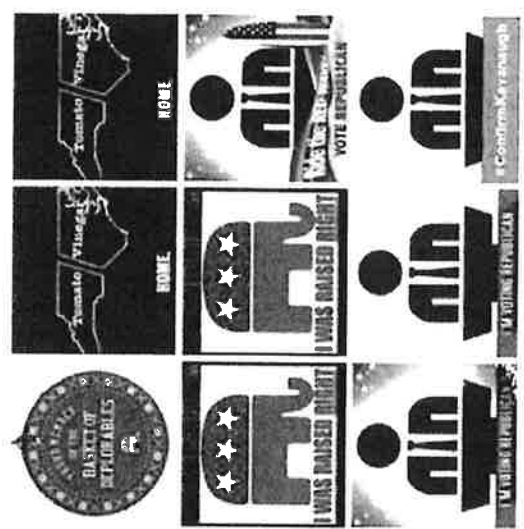


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From Seima, North Carolina

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- Socialism -
- Anti-America -
- Anti-Jews/Israel -
- Anti-2nd Amendment -
- Pro-Eugenics -
- Pro-Hate -

Modern Day Nazi Party

PJ Humes shared: Earl Humes April 16 at 5:10 PM



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Deposition Exhibit
 2
 Reid 5/7/19



Reginald Reid Timeline 2019 April

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Intro

Lover of the true, the good, the great, and the beautiful



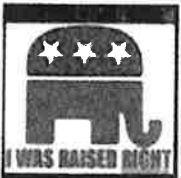
Reginald Reid

April 10 at 2:24 PM



- Lives in Winston-Salem, North Carolina
- From Salma, North Carolina
- Followed by 347 people

Photos



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Deposition Exhibit 3 Reid 5/7/19



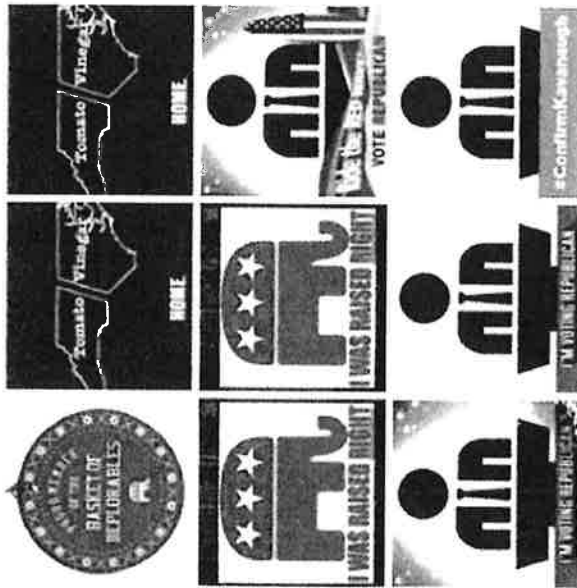
Reginald Reid

April 21 at 3:13 PM

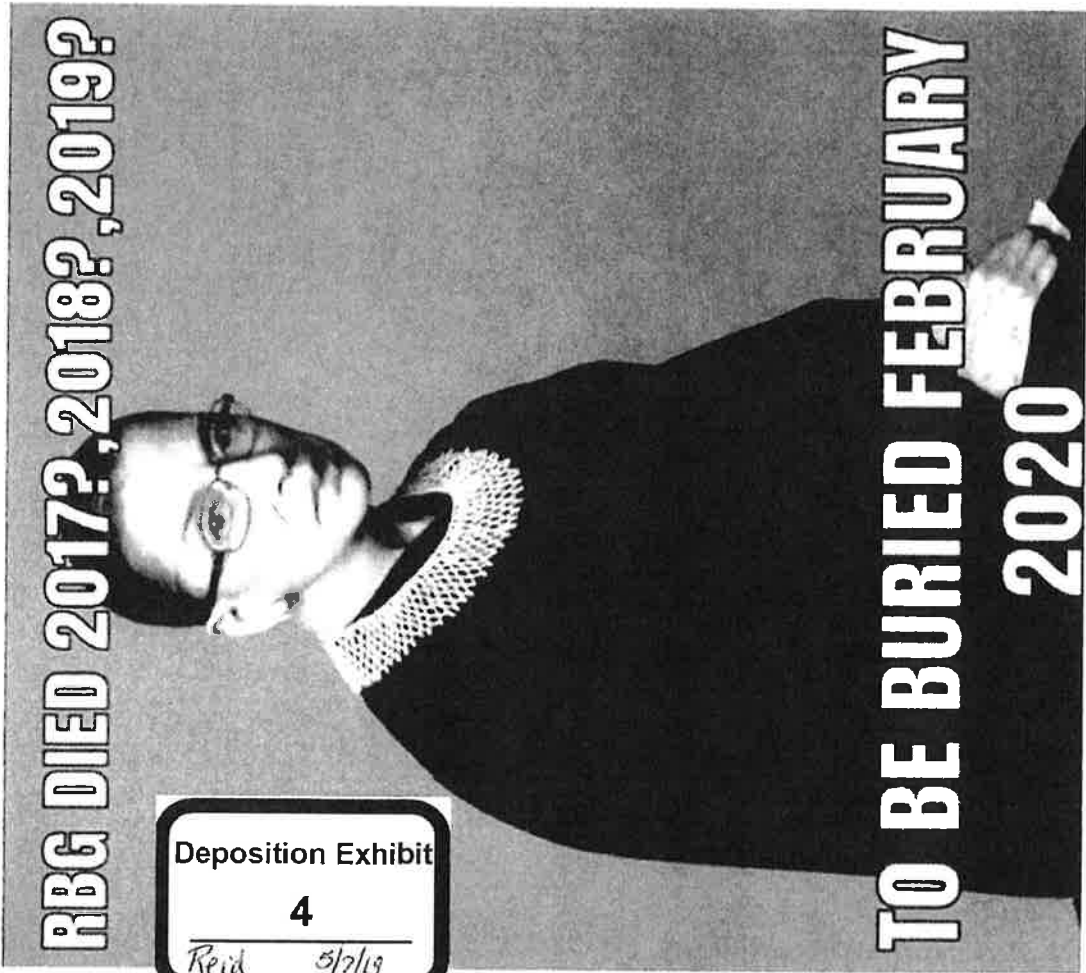


Lover of the true, the good, the great, and the beautiful

- Lives in Winston-Salem, North Carolina
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Joseph Shane Bailey
April 21 at 1:05 AM



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