

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

COMMON CAUSE, et al.,

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' REPLY BRIEF
REGARDING MOTION FOR
CLARIFICATION
PURSUANT TO RULE 45**

Plaintiffs respectfully submit this reply brief regarding their Motion for Clarification Pursuant to Rule 45. After receiving Legislative Defendants' and Intervenors' response briefs yesterday, Plaintiffs sent all Defendants a list of the specific files that Plaintiffs propose to filter out based on file names indicative of sensitive personal information. Based on their file names, these files are undeniably of a sensitive personal nature, and it should be uncontroversial that they should be filtered out before Plaintiffs provide copies of the remaining files to all Defendants. The Court should either (a) order Plaintiffs to allow for copying or inspection of the third-party subpoena materials after filtering out the files containing personal sensitive information that Plaintiffs have identified, or (b) simply allow for copying and inspection of the original, unfiltered materials in their entirety. The alternatives that Legislative Defendants suggest are impractical or impossible, and are designed solely to achieve delay and to deny Plaintiffs access to materials properly received in response to a third-party subpoena.

As an initial matter, Plaintiffs seek to correct several factual misconceptions in Legislative Defendants' and Intervenor Defendants' briefs. Legislative Defendants state that Plaintiffs "serv[ed] a subpoena on Dr. Hofeller's daughter mere months after his death." LD Opp. at 1. In fact, it was Ms. Hofeller¹ who contacted Plaintiffs to advise that she had possession of materials that might concern her father's redistricting work, and that she wished to make those materials available. To ensure that all parties would receive notice and an opportunity to object as well as all other rights conferred by Rule 45, Plaintiffs issued a formal subpoena to Ms. Hofeller on February 13, 2019, with written notice to Defendants' counsel *on the same day*, rather than simply taking possession of the materials. Paragraphs 1 through 3 of the subpoena requested all documents in Ms. Hofeller's possession, custody, or control relating to Dr.

¹ Plaintiffs understand that Ms. Hofeller has changed her last name from Lizon back to Hofeller, and this brief accordingly refers to her as Ms. Hofeller.

Hofeller's work on the challenged plans. Paragraph 4 of the subpoena requested "[a]ny storage device in [Ms. Hofeller's] possession, custody, or control that contains, or may contain: (1) any and all ESI requested in the preceding paragraphs; (2) and/or any ESI relating to any documents requested in the preceding paragraphs." Ex. A to Mot. for Clarification.

Ms. Hofeller did not object to the subpoena in any way. Nor did Legislative Defendants or anyone else lodge any objection to any aspect of the subpoena. Plaintiffs received responsive materials from Ms. Hofeller on March 13, 2019, and Plaintiffs notified all parties within five business days, on March 20, 2019, precisely as Rule 45(d1) requires. (Any suggestion that Plaintiffs failed to follow Rule 45(d1) is therefore wrong.)

Legislative Defendants are also wrong in asserting that Plaintiffs' proposed process for filtering sensitive personal information would give Defendants no "way to verify the integrity of this process, the criteria for weeding out documents, and how those criteria are applied in practice." LD Opp. at 4. Before filing their Motion for Clarification, Plaintiffs offered to send Defendants the specific keywords that Plaintiffs would use to search file names for sensitive personal information that would be filtered out. *See* Mot., Ex. B. (4/2/19 e-mail from Jones to Strach). Plaintiffs even offered to have Legislative Defendants' and Intervenor Defendants' vendor(s) *sit in the room* with Plaintiffs' vendor to observe the filtering the process. *Id.* (4/4/19 e-mail from Theodore to Branch). Plaintiffs thus offered multiple options and accommodations to Legislative Defendants and Intervenor Defendants, but both categorically asserted that they were not open to any filtering process at all.

In response to Legislative Defendants' and Intervenor Defendants' briefs yesterday, and to address any concerns about transparency in the filtering, Plaintiffs have proposed the following process to resolve this matter. Plaintiffs will provide Defendants the exact file names

and file paths of the files that Plaintiffs' vendor would filter out before making a copy of the materials for Defendants. Last night, Plaintiffs sent a proposed list of files names and file paths to Defendants. Earlier today, Legislative Defendants responded identifying several additional files of a sensitive personal nature that were not included on this initial list. Ex. 1 (4/12/19 e-mail from Strach to Jacobson). Plaintiffs subsequently added search terms to capture those items, and sent Defendants a revised list of proposed files to filter. *Id.* (4/12/19 e-mail from Jones to Strach). Plaintiffs have also provided Defendants the keywords that Plaintiffs used to generate this list. *Id.*

The list of files that Plaintiffs propose to filter contains 1,001 files whose names make apparent that they contain highly sensitive personal information. The names include files such as "Surgery Medications," "Hofeller Taxes 2011," and so on. No party has identified any file on the list that is anything other than obviously sensitive and personal. Plaintiffs have not appended this list of file names to this brief in the interest of maintaining the confidentiality of the file names, but Plaintiffs would be happy to submit the list to the Court for *in camera* review.

Unfortunately, Legislative Defendants and Intervenor Defendants appear unwilling to consent even to this totally transparent and reasonable process, even though it provides them complete certainty as to the files that would be filtered out and would provide them with an opportunity to identify and request any file that they believe is not sensitive or personal. State Defendants have consented to this proposed process, stating that they have "no interest in obtaining or retaining the documents on the list circulated by the Plaintiffs." Ex. 1 (4/12/19 e-mail from Cox to Jacobson). Legislative Defendants and Intervenor Defendants still oppose.

The other alternative options that Legislative Defendants have proposed are unreasonable and are designed to cause further delay. *First*, Legislative Defendants propose that "the court

direct Plaintiffs to return all of the files to Ms. [Hofeller], request that she produce only files that are responsive to the subpoena, and provide instructions on how best to proceed.” LD Opp. 5. It is not reasonable to expect Ms. Hofeller to look through all of the hard drives and thumb drives that she voluntarily provided—which contain more than 76,000 files in total—and manually filter out items. Such a process, in addition to imposing an undue and unnecessary burden on Ms. Hofeller, would likely take an extended period of time, potentially making it impossible for the parties to process and search through the materials in time for use at trial. And, as described, it was Ms. Hofeller who proactively sought to provide the entirety of these materials to Plaintiffs.

Legislative Defendants provide no legal support for their demand that Plaintiffs return materials produced in response to a lawfully issued subpoena—one to which no party lodged any objection. Even Intervenor Defendants acknowledge that “the hard drive and thumb drives, *in their totality*, were responsive to Plaintiffs’ subpoena.” ID Br. at 6 n.1. That is unquestionably correct. The subpoena requested “[a]ny storage device” that may contain specified ESI, *see* Mot., Ex. A, and the devices Plaintiffs received fit that bill. If Legislative Defendants had any objection to Plaintiffs’ subpoena to Ms. Hofeller, they could have filed an objection when they received notice of the subpoena on February 13, 2019, but they did not. There simply is no legal authority for ordering Plaintiffs to return the materials that Ms. Hofeller produced after no party objected to the subpoena.

Second, Legislative Defendants propose that the court “direct the Plaintiffs to provide all parties with a copy of the files received and then direct the parties to confer and agree upon an out-of-court process whereby the parties identify non-responsive data and return the non-responsive data to Ms. [Hofeller] or destroy it.” LD Br. 5-6. But the parties cannot filter out “non-responsive” data because the devices Plaintiffs received are responsive in their entirety, as

even Intervenor Defendants have acknowledged. To the extent Legislative Defendants intend to filter out data on the basis of its purported *relevance*, their proposal is entirely infeasible, and in any event legally unsupportable. The parties will not be able to agree to a “common set of search terms” to identify *relevant* material. And Legislative Defendants have no legal right to dictate what materials Plaintiffs may review after they were provided by a third party in response to a lawful subpoena. Again, the time to raise any such issue was months ago when Plaintiffs issued the subpoena, not five days before the close of written fact discovery after the subpoena recipient produced the materials at issue without anyone having raised any objection.

Third, by focusing on which materials are supposedly “responsive,” Legislative Defendants’ final proposal suffers the same flaws. The issue here is not “responsiveness.” Again, the devices Plaintiffs received are unquestionably responsive to the subpoena, and Ms. Hofeller has already produced them without objection. There is no basis for Legislative Defendants to raise any question about the responsiveness of a third party’s voluntary subpoena response.² And requiring Plaintiffs to destroy or return any documents that Legislative Defendants unilaterally declare “nonresponsive,” as Legislative Defendants demand, lacks any legal support. A party does not get to declare that a *third-party*’s responsive document is not responsive and then hold up all other parties’ *review* of the documents. Legislative Defendants will have every opportunity to object to the admission of any document at trial.

Legislative Defendants’ proposals just create opportunities for gamesmanship and are designed only to cause delay and to deny Plaintiffs the opportunity to review materials a third

² Legislative Defendants appear to be taking the position that any document relating to Dr. Hofeller’s work “in other states” is “non-responsive.” Ex. 1 (4/12/19 e-mail from Strach to Jones). That is wrong. As explained, all of the materials are “responsive” to the subpoena, since the subpoena. Whether the files are “relevant” in the sense that they will be admissible at trial will require a review of the files, but that is a different inquiry from responsiveness.

party voluntarily provided without objection in response to a lawful subpoena. None of the Legislative Defendants' proposals have anything to do with protecting sensitive, personal information, such as medical, tax, or personal financial information. Their proposals are just an effort to prevent Plaintiffs from reviewing and using materials that Legislative Defendants fear will be damaging to their case.

In contrast, the filtering process Plaintiffs are proposing is efficient, could be done very quickly, and is designed solely to filter out materials of a personal and sensitive nature. Alternatively, in the interests of efficiency, if the Court does not wish to adopt a filtering process, the Court should simply order Plaintiffs to make the complete, unfiltered materials available to Defendants for inspection and copying.

WHEREFORE, Plaintiffs request that the Court approve Plaintiffs' proposed process set forth in this reply brief, under which Plaintiffs will filter out the specific files on the list that Plaintiffs have already provided to Defendants, and then provide copies of all the remaining materials to Defendants.

Respectfully submitted this the 12th day of April, 2019

POYNER SPRUILL LLP

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

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*Counsel for Common Cause and the
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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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This the 12th day of April, 2019.

/s/Edwin M. Speas, Jr.

Edwin M. Speas, Jr.

EXHIBIT 1

Jacobson, Daniel

From: Jones, Stanton
Sent: Friday, April 12, 2019 11:50 AM
To: Strach, Phillip J.; John Branch
Cc: Brennan, Stephanie; McKnight, Michael D.; Majmundar, Amar;
zzz.External.AKhanna@perkinscoie.com; Braden, E. Mark; Nate Pencook; Cox, Paul;
Riggins, Alyssa; Stanley, Trevor M.; Raile, Richard; melias@perkinscoie.com; Hill, Linda;
Theodore, Elisabeth; Jacobson, Daniel; Speas, Edwin M.; Mackie, Caroline P.; Christine
McCaffrey
Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification
Pursuant to Rule 45
Attachments: Hofeller -- files to filter.xlsx

Phil:

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

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

Following your latest e-mail below, we have added the terms "IRA," "IRS," variations of "401-k" based on removing the hyphen and making the k capitalized or not, and "Hartsbough." This search produced 32 additional files that we propose to filter out. Attached is an updated spreadsheet with the complete list of files we propose to filter, with the 32 new ones added at the end. If you have other terms indicative of sensitive personal information that you think we should

search, please let us know. As we've said previously, our only objective here is to remove sensitive personal information so that no one sees it, including us. And we realize that the keyword search process may be underinclusive, which is why we would designate any sensitive personal information that is not picked up by the keyword searches as Highly Confidential under the Consent Protective Order.

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

Regards,
Stanton

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

Sent: Friday, April 12, 2019 10:55 AM

To: Jacobson, Daniel; Jones, Stanton; John Branch

Cc: Brennan, Stephanie; McKnight, Michael D.; Majmundar, Amar; zzz.External.AKhanna@perkinscoie.com; Braden, E. Mark; Nate Pencook; Cox, Paul; Riggins, Alyssa; Stanley, Trevor M.; Raile, Richard; melias@perkinscoie.com; Hill, Linda; Theodore, Elisabeth; Speas, Edwin M.; Mackie, Caroline P.; Christine McCaffrey

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

Dan:

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

Phil

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

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

Sent: Thursday, April 11, 2019 10:01 PM

To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; John Branch <JBranch@shanahanlawgroup.com>

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

<CMackie@poynerspruill.com>

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

Phil and John,

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

Best,
Dan

Daniel Jacobson
Senior Associate

Arnold & Porter
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Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

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

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

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

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

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

Phil and John:

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

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

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

Regards,
Stanton

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

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

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

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

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

Ms. Myers and Mr. Steele:

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

Thanks.

Phil

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

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From: Nate Pencook <NPencook@shanahanlawgroup.com>

Sent: Thursday, April 11, 2019 4:52 PM

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Cc: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Speas, Edwin M. <ESpeas@poynerspruill.com>; AKhanna@perkinscoie.com; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; melias@perkinscoie.com; Hill, Linda <LHill@poynerspruill.com>; John Branch <JBranch@shanahanlawgroup.com>

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

Ms. Myers and Mr. Steele,

Pursuant to Sections 1 and 7 of the Case Management Order, Intervenor-Defendants' Response in Opposition to Plaintiffs' Motion for Clarification Pursuant to Rule 45 is attached.

Thanks,

Nate Pencook | Associate



SHANAHAN LAW GROUP, PLLC

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From: Nate Pencook

Sent: Monday, April 08, 2019 9:45 AM

To: 'Cox, Paul' <pcox@ncdoj.gov>; Riggins, Alyssa <alyssa.riggins@ogletree.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Steele, Adam H. <Adam.H.Steele@nccourts.org>

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

Ms. Myers and Ms. Steele,

Intervenor-Defendants submit the following, pursuant to Section 4 of the CMO, regarding the Plaintiffs' Motion for Clarification:

- a) Intervenor-Defendants do not consent to entry of the requested relief;
- b) Intervenor-Defendants request a hearing on the motion;
- c) Intervenor-Defendants intend to submit a written response to the Motion and request to do so by Thursday, April 11.
- d) Intervenor-Defendants are not aware of any other matters that should be brought to the Court's attention regarding this Motion.

Thanks,

Nate Pencook | Associate



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

Sent: Monday, April 08, 2019 9:34 AM

To: Riggins, Alyssa <alyssa.riggins@ogletree.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Steele, Adam H. <Adam.H.Steele@nccourts.org>

Cc: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Speas, Edwin M. <ESpeas@poynerspruill.com>; AKhanna@perkinscoie.com; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; melias@perkinscoie.com; Hill, Linda <LHill@poynerspruill.com>; John Branch <JBranch@shanahanlawgroup.com>; Nate Pencook <NPencook@shanahanlawgroup.com>

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

Ms. Myers and Mr. Steele,

Pursuant to Section 4 of the Court's Case Management Order, the State Defendants state the following with respect to Plaintiffs' Motion for Clarification:

- a. State Defendants consent to the requested relief.
- b. State Defendants do not request a hearing but could be available if one is needed.
- c. State Defendants do not plan to file a written response to the motion.
- d. State Defendants are not aware of any other matter to be brought to the Court's attention.

Best regards,



Paul M. Cox

Special Deputy Attorney General

Phone: (919)716-6932

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

From: Riggins, Alyssa <alyssa.riggins@ogletree.com>

Sent: Monday, April 8, 2019 7:55 AM

To: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Steele, Adam H. <Adam.H.Steele@nccourts.org>

Cc: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Speas, Edwin M. <ESpeas@poynerspruill.com>; AKhanna@perkinscoie.com; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; melias@perkinscoie.com; Hill, Linda <LHill@poynerspruill.com>; Cox, Paul <pcox@ncdoj.gov>; John Branch <JBranch@shanahanlawgroup.com>; Nate Pencook <NPencook@shanahanlawgroup.com>

Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45 [ODNSS-OGL.026753.000016]

Ms. Myers and Mr. Steele,

Pursuant to Section 4 of the Court's Case Management Order, Legislative Defendants state the following with respect to Plaintiffs' First Motion to Compel:

- a. Legislative Defendants do not consent to entry of the requested relief.
- b. Legislative Defendants request a hearing on the motion.
- c. Legislative Defendants intend to submit a response to the motion and request an opportunity to do so by Thursday, April 11.
- d. Legislative Defendants are not currently aware of any other matter that should be brought to the Court's attention regarding this motion.

Best Regards,
Alyssa Riggins

Alyssa Riggins | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

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

Sent: Thursday, April 04, 2019 4:45 PM

To: Mackie, Caroline P. <CMackie@poynerspruill.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Steele, Adam H. <Adam.H.Steele@nccourts.org>

Cc: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Speas, Edwin M. <ESpeas@poynerspruill.com>; AKhanna@perkinscoie.com; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; melias@perkinscoie.com; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Hill, Linda <LHill@poynerspruill.com>; Cox, Paul <pcox@ncdoj.gov>; John Branch <JBranch@shanahanlawgroup.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>

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

Ms. Myers and Mr. Steele,

Apologies, but I just realized that I neglected to include counsel for intervenor defendants on my earlier email. I am copying them on this message.

Sincerely,
Daniel Jacobson

Daniel Jacobson
Senior Associate

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Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: Jacobson, Daniel
Sent: Thursday, April 4, 2019 3:47 PM
To: Mackie, Caroline P. <CMackie@poynerspruill.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Steele, Adam H. <Adam.H.Steele@nccourts.org>
Cc: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; Strach, Phillip J. <phil.strach@ogletree.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Speas, Edwin M. <ESpeas@poynerspruill.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; melias@perkinscoie.com; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Hill, Linda <LHill@poynerspruill.com>; Cox, Paul <pcox@ncdoj.gov>
Subject: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Ms. Myers and Mr. Steele,

Pursuant to Section 1 of the Court's Case Management Order, attached is a copy of Plaintiffs' Motion for Clarification Pursuant Rule 45, which was filed with the clerk earlier today. In addition, pursuant to Section 3 of the Case Management Order, Plaintiffs provide the following information with respect to the motion:

- (a) Legislative Defendants and Intervenor Defendants do not consent to the relief sought in the motion. State Defendants do consent.
- (b) Plaintiffs do not request a hearing, but would be happy to appear at a hearing should the Court wish to hold one on this motion. Plaintiffs would make themselves available for such a hearing at the Court's convenience.
- (c) Plaintiffs asked Legislative Defendants and Intervenor Defendants to indicate how many days they would like to respond to the motion, as well as their availability for a hearing should the Court request one. Legislative Defendants have responded that they do not know how much time they want to respond until they review the motion. Intervenor Defendants have not responded regarding how much time they would like to file a response. Neither Legislative Defendants nor Intervenor Defendants have indicated their availability for a hearing should the Court wish to hold one. State Defendants have indicated that they are available for a hearing next week if necessary.
- (d) There are no other matters that Plaintiffs wish to bring to the Court's attention regarding this motion at this time.

Sincerely,
Daniel Jacobson

Daniel Jacobson
Senior Associate

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