

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' OPPOSITION  
TO LEGISLATIVE  
DEFENDANTS' MOTION  
TO AMEND THE CASE  
MANAGEMENT ORDER**

## **INTRODUCTION**

Legislative Defendants have not remotely justified their request for a two-week extension of time for their expert reports. The Court previously extended the deadline for Plaintiffs' expert reports after finding that Legislative Defendants had failed to provide adequate or timely discovery responses, and stated in its order that all other deadlines would remain unchanged. After waiting more than three months to serve any discovery requests in this case, Legislative Defendants now contend that the timing of Plaintiffs' responses somehow warrants an extension for their expert reports. But in sharp contrast to Legislative Defendants' deficient discovery responses, Plaintiffs undertook extraordinary efforts to provide thorough and timely responses to Legislative Defendants' far-reaching requests, and completed their responses by the mutually agreed-upon April 17 deadline for written fact discovery, nearly two weeks before the agreed-upon April 30 deadline for Legislative Defendants' expert reports. Legislative Defendants also offer a makeweight objection to the substance of Plaintiffs' discovery responses in an attempt to manufacture some basis for an extension, but even then, Legislative Defendants fail to identify any prejudice to the preparation of their expert reports resulting from the trivial issue they identify. Indeed, Legislative Defendants offer no explanation as to how Plaintiffs' document productions are relevant at all to Legislative Defendants' expert reports. Legislative Defendants should not gain the benefit of delay from their own dilatory conduct.

## **BACKGROUND**

Plaintiffs filed this action on November 13, 2018, served discovery requests on Legislative Defendants the same day, and moved to expedite the case a week later. In the following months, Plaintiffs asked Legislative Defendants on multiple occasions when they intended to serve discovery requests on Plaintiffs. Each time, Legislative Defendants responded that they would serve their discovery requests "in due course."

On February 15, 2019, the parties submitted a stipulated case schedule to the Court. *See* Ex. A. Under the stipulated case schedule, the parties agreed that the deadline to complete written fact discovery from Plaintiffs would be April 17, and that the deadline for Legislative Defendants' expert reports would be nearly two weeks later, on April 30. *Id.*

Also on February 15, more than three months after the complaint was filed, Legislative Defendants finally served discovery requests on Plaintiffs. These requests included interrogatories and requests for production to all 39 Plaintiffs—the North Carolina Democratic Party, Common Cause, and the 37 individual Plaintiffs—collectively totaling 505 interrogatories (many of which had multiple sub-parts) and 513 requests for documents.

Thirty days later, on March 18, Plaintiffs timely provided thorough written objections and responses to all these requests on behalf of all Plaintiffs. Two days later, Plaintiffs began rolling productions of documents, and within a week, Plaintiffs had produced 2,481 documents totaling 9,931 pages from numerous individual Plaintiffs and Common Cause. Within less than a month, Plaintiffs completed their productions, producing 9,910 documents totaling 53,941 pages.

The timeline by which NCDP began producing documents was dictated by Legislative Defendants' delay in finalizing the consent protective order governing treatment of confidential and highly confidential discovery materials. Plaintiffs sent Defendants a proposed protective order on March 14, four days *before* Plaintiffs' discovery responses were due. *See* Ex. B (3/14/19 e-mail from Theodore to counsel). Having a protective order in place was of central concern to NCDP given the sensitive nature of much of the discovery that Legislative Defendant requested. On a March 15 meet and confer, Legislative Defendants indicated that they were amenable to the proposed protective order and would follow up with proposed edits. *Id.* (3/25/19 e-mail from Theodore to Stanley). But Legislative Defendants never followed up. On March 25,

Plaintiffs contacted Legislative Defendants again inquiring about the status of the protective order and whether they still intended to send edits. *Id.* Legislative Defendants did not respond.

On March 26, Legislative Defendants sent Plaintiffs a letter outlining purported deficiencies in NCDP's discovery responses, including that NCDP had not yet produced documents. The next day, March 27, Plaintiffs e-mailed Legislative Defendants explaining that NCDP would begin producing documents as soon as the parties reached agreement on the protective order. Ex. C (3/27/19 e-mail from Mackie to Strach). Even at this point, Legislative Defendants took five more days to sign the protective order, and only after Plaintiffs followed up several more times. *See* Ex. B (3/29/19 through 4/1/19 e-mails). Immediately after Legislative Defendants agreed to the protective order on April 1, NCDP began its rolling production.

On March 30, NCDP sent a letter responding to Legislative Defendants' deficiency letter. In its letter, NCDP asked Legislative Defendants "if there are particular types of information that [they] wish NCDP to prioritize in its document production for purposes of [Legislative Defendants'] experts." Ex. D at 2. Legislative Defendants never responded to this offer to prioritize production of certain materials for use by Legislative Defendants' experts. Nor did Legislative Defendants respond when Plaintiffs followed up on April 1 asking if Legislative Defendants wanted to meet and confer regarding the issues raised in their deficiency letter to NCDP. Ex. E (4/1/19 e-mail from Jones to Strach and Stanley). Legislative Defendants finally requested a meet and confer regarding the NCDP's productions on April 18, which the parties have now conducted.

Plaintiffs' document production continued on an ongoing basis and concluded on April 17—the mutually agreed-upon date for the close of written fact discovery from Plaintiffs. The

following chart shows the number of documents and pages of documents produced by Plaintiffs over the four-week period from March 20 to April 17:

<b>Production Date</b>	<b>Plaintiff</b>	<b>Documents Produced</b>	<b>Total Pages of Documents Produced</b>
3/20/2019	McCracken	49	191
3/20/2019	Campbell	4	4
3/20/2019	D. Brown	36	206
3/20/2019	Gauck	24	142
3/20/2019	Smith	104	274
3/20/2019	Gates	68	782
3/20/2019	Barnes	29	155
3/20/2019	Peters	5	14
3/20/2019	Johnson	1	2
3/20/2019	Sloan	3	5
3/21/2019	Rumph	1	1
3/21/2019	DuBose	1	9
3/21/2019	Frey	54	289
3/21/2019	Parker	5	12
3/21/2019	Schaller	14	20
3/21/2019	Bradley	89	190
3/21/2019	McGrigor	2	3
3/21/2019	Brien	57	204
3/21/2019	Service	417	1044
3/22/2019	Common Cause	254	719
3/26/2019	Wolff	61	69
3/26/2019	Miller	58	1146
3/26/2019	Thomas	1263	3818
3/27/2019	Wischmann	144	632
3/27/2019	Sloan	1	2
3/29/2019	Balla	5	6
3/29/2019	Turner	211	1357
4/1/2019	Common Cause	173	407
<i>Legislative Defendants Agree to Protective Order</i>			
4/1/2019	NCDP	1455	7823
4/2/2019	NCDP	30	145
4/2/2019	Jordan	55	293
4/2/2019	Barnes	1	2
4/2/2019	Wischmann	7	23
4/2/2019	Bradley	23	54
4/4/2019	NCDP	1313	7983

4/10/2019	Gauck	2	44
4/10/2019	Barnes	4	14
4/10/2019	Wischmann	5	19
4/11/2019	Person	14	37
4/12/2019	NCDP	969	7211
4/16/2019	Common Cause	36	245
4/16/2019	NCDP	2409	16181
4/16/2019	Machak	1	6
4/16/2019	J. Brown	146	1073
4/16/2019	Schaller	2	4
4/16/2019	Wischmann	2	18
4/16/2019	Harper	12	83
4/16/2019	Brien	6	17
4/16/2019	Thomas	209	641
4/17/2019	Common Cause	1	1
4/17/2019	Miller	11	94
4/17/2019	Rumph	3	9
4/17/2019	Frey	60	216
4/17/2019	Sloan	1	2
<b>Total</b>		<b>9,910</b>	<b>53,941</b>

In addition to Plaintiffs’ review and production of tens of thousands of pages of documents on a compressed timeline, Plaintiffs also voluntarily produced all of the backup materials for their expert reports—including the experts’ computer code and underlying data—on the same day that the reports were served, April 8. Legislative Defendants had previously served discovery requests for Plaintiffs’ experts’ backup data, but the responses under the rules would not have been due until later in April. Plaintiffs nonetheless offered to provide their experts’ backup data earlier—simultaneous with serving their expert reports—so long as Legislative Defendants would do the same. Ex. F (3/25/19 e-mail from Jones to Strach et al.).

On April 15, Legislative Defendants sent a letter to Plaintiffs requesting consent to a two-week extension for their expert reports, contending that Plaintiffs’ document productions had purportedly “prejudice[d] Legislative Defendants’ ability to complete their expert reports.” Ex.

G at 1. The letter cited the timeline of Plaintiffs' productions as well as certain issues with the formatting of certain documents from a few individual Plaintiffs, such as the legibility of a receipt for a \$5 political contribution by plaintiff Donald Rumph. *Id.* at 1-2; *see* Ex. H at 4. The April 15 letter did not cite any of the other grounds on which Legislative Defendants now rely in their motion for an extension, such as the scope of Plaintiffs' expert reports or Dr. Chen's backup files. Plaintiffs responded on April 17, declining to consent to the extension. Ex. H. Plaintiffs observed, among other issues, that Plaintiffs had completed their production pursuant to the timeline on which the parties agreed and the Court ordered; that Legislative Defendants offered no explanation as to how their experts had been prejudiced; and that Legislative Defendants did not even say how Plaintiffs' document productions were relevant to their experts' work

On April 18, Legislative Defendants sent a letter to Plaintiffs identifying four ".txt" files that inadvertently had not been included in the April 8 production of backup materials from Plaintiffs' expert, Dr. Jowei Chen, who simulated thousands of non-partisan districting plans using a computer algorithm and compared them to the enacted plans. Ex. I. Plaintiffs responded *less than two hours later* providing these files.<sup>1</sup> Ex. J. Two of the files were simply lists of all 100 counties in North Carolina and the specific county grouping containing each county under the 2017 enacted plans, and the other files contained basic data on the county groupings in the enacted plans (not in Dr. Chen's simulated plans). *Id.* Plaintiffs further explained that Dr. Chen's computer code, which had been sent on April 8, clearly showed how these .txt files were created and could be recreated. *Id.*

Legislative Defendants' motion for a two-week extension followed.

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<sup>1</sup> While Legislative Defendants listed four files in their letter as having not been provided, upon receiving the letter, Dr. Chen realized that it was five files that had been inadvertently not included among the thousands of backup files he had provided. Plaintiffs thus provided these five files within hours of receiving Legislative Defendants' letter.

## ARGUMENT

### **I. The Extension of Time for Plaintiffs' Expert Reports – Imposed by the Court Due to Legislative Defendants' Deficient Discovery Responses – Does not Justify an Extension of Time for Legislative Defendants' Expert Reports**

This Court *sua sponte* extended the deadline for Plaintiffs' expert reports in light of significant deficiencies in Legislative Defendants' discovery responses, including their failure to provide basic information essential to Plaintiffs' expert reports (such as the addresses of incumbent legislators at the time of the drawing of the maps); their failure to respond to basic interrogatories and their assertions that straightforward terms like “formulas or algorithms” and “partisanship scores or estimates” were vague; their failure to conduct any reasonable search for documents, much less produce them; and their failure to provide a privilege log. Unlike Plaintiffs—who have worked diligently to timely produce tens of thousands of pages of documents on behalf of 39 plaintiffs by April 17, the deadline to which the parties agreed—Legislative Defendants overwhelmingly failed to produce responsive documents or respond adequately to interrogatories. The Court ordered Legislative Defendants to cure the deficiencies by April 3, and also extended the deadline for Plaintiffs' expert reports to give the experts five days to incorporate information from the supplemented discovery responses into their reports.

Legislative Defendants now complain that “[w]hen the Court extended the deadline for Plaintiffs' expert reports it did not make a corresponding extension for expert reports of [Legislative Defendants].” Mot. 4. As an initial matter, there is no legitimate reason why Legislative Defendants waited nearly a month to raise this complaint with the Court, when they could have done so as soon the Court issued its March 25 order extending the time for Plaintiffs' expert reports. But more importantly, the date by which Plaintiffs served their expert reports—which was dictated by Legislative Defendants' own discovery misconduct—does not provide a



basis to extend Legislative Defendants' expert report deadline. Legislative Defendants point to the "time needed for the experts to develop their own reports," rather than just rebut Plaintiffs' reports, Mot. at 5, but Legislative Defendants have known about their April 30 expert report deadline since February 15, and their experts could have been working on their own affirmative analyses since then. To the extent Legislative Defendants wish they had more time to respond to Plaintiffs' reports, that is a problem of their own making, since it was their own discovery misconduct that resulted in the extension for Plaintiffs' experts.

Moving back the deadline for Legislative Defendants' expert reports would improperly shift the cost of Legislative Defendants' discovery misconduct onto Plaintiffs, who would then have only two weeks to serve rebuttal reports—less time than the three weeks Legislative Defendants have on the existing schedule. As Plaintiffs have previously stated, Plaintiffs' primary concern is to avoid any delay in the trial date, to ensure that there is sufficient time to resolve this case and complete any remedial process before the next elections. Legislative Defendants should not be able to take advantage of that fact, and their own discovery deficiencies, to prejudice Plaintiffs' rebuttal reports. The parties previously negotiated the amount of time that Plaintiffs would have to file rebuttal reports, and Plaintiffs have done nothing to warrant shortening that time.

Discovery misconduct has consequences. Three weeks, while shorter than five weeks, will allow Legislative Defendants' experts to respond to Plaintiffs' expert reports, as reflected in this Court's March 25 order. The consequences of Legislative Defendants' misconduct certainly should not be borne by Plaintiffs.

## **II. Plaintiffs' Discovery Responses Do Not Warrant an Extension**

Legislative Defendants' other argument for an extension—that Plaintiffs' discovery

responses were somehow deficient and somehow prejudiced Legislative Defendants' experts—is entirely without basis. Plaintiffs acted with extraordinary diligence in responding in a timely and thorough manner to Legislative Defendants' broad discovery requests, and Legislative Defendants have not articulated how their experts have been purportedly prejudiced by either the timing or content of Plaintiffs' production, or even how Plaintiffs' documents are relevant to their experts' work at all.

**A. Plaintiffs' Discovery Responses Were Timely and Adequate in All Respects**

Legislative Defendants first argue that Plaintiffs' purported "delay" in completing their production of documents justifies an extension. Mot. at 5. But the only delay was in Legislative Defendants' serving their discovery requests. Legislative Defendants waited until February 15—more than three months after the complaint was filed—to serve any discovery. When Legislative Defendants finally did serve discovery requests, Plaintiffs timely served thorough written responses and objections to the interrogatories and document requests on behalf of all 39 Plaintiffs on March 18. Plaintiffs then commenced a rolling production, as is standard, particularly because Legislative Defendants' requests required review of tens of thousands of potentially responsive documents. Far from conducting a "slow" production, Plaintiffs produced nearly 3,000 documents totaling nearly 11,300 pages by March 29, and NCDP alone produced nearly 2,900 documents totaling over 16,000 pages between April 1 and April 4. *Supra* 4-5.

The production of documents on behalf of all Plaintiffs was complete by April 17, the agreed-upon deadline for the completion of written fact discovery under the stipulated case schedule. That gives Legislative Defendants at least two weeks to incorporate any relevant information into their expert reports—which is exactly the amount of time they agreed to under the stipulated schedule. And in reality, Legislative Defendants have had much longer, given that

Plaintiffs produced a significant portion of their documents far in advance of April 17.

Indeed, even counting from the completion of the production on April 17, Legislative Defendants will have *more time* than Plaintiffs did to incorporate discovery into their expert reports. The Court ordered Legislative Defendants to supplement their discovery responses by April 3 and extended the deadline for Plaintiffs' expert reports to April 8, giving Plaintiffs five days to incorporate the supplemental discovery responses into their expert reports.

Legislative Defendants also object to the fact that NCDP began its rolling production of documents only after Legislative Defendants agreed to a protective order regarding confidential treatment of sensitive information. But the record shows that Plaintiffs asked Legislative Defendants about a protective order on March 14, *before* Plaintiffs' discovery responses were due, and Plaintiffs followed up on March 25 but did not receive any response from Legislative Defendants. Ex. B (3/14/19 e-mail from Theodore to counsel). On *March 27*, after Legislative Defendants inquired about the status of NCDP's production, Plaintiffs specifically advised Legislative Defendants that NCDP had sensitive documents that could be produced once Legislative Defendants agreed to the protective order. Ex. C (3/27/19 e-mail from Mackie to Strach). Legislative Defendants then took nearly another week to sign the protective order, and Plaintiffs began producing NCDP documents that same day. Ex. B (4/1/19 e-mail from Strach to Jones). Thus, while Legislative Defendants assert that "March 30 . . . was the first time that NCDP alleged it was withholding documents for lack of a protective order," and that "Legislative Defendants promptly signed the protective order on Monday, April 1," Mot. at 3-4, these assertions are inaccurate and misleading. And NCDP did not engage in "gamesmanship" (Mot. at 3); it sought to ensure the confidentiality of sensitive political information before it was turned over to leaders of the opposing political party. This was reasonable in every respect.

In all events, given that Plaintiffs produced all documents, including sensitive documents, by the agreed-upon April 17 deadline (nearly two weeks before Legislative Defendants' April 30 expert report deadline), the fact that Plaintiffs began producing sensitive documents only after the protective order was signed is irrelevant and cannot justify an extension.

Legislative Defendants next argue that Plaintiffs "failed to comply with Local Civil Rule 5.7." Mot. at 5. That is wrong. The rule requires a party to disclose certain information "upon request." Local Rule 5.7. Legislative Defendants never requested information pursuant to Local Rule 5.7 until April 11, when they requested a list of custodians associated with Common Cause's production, which Plaintiffs provided promptly. Ex. K at 2-3. On an April 24 meet and confer, Legislative Defendants requested a list of search terms used by NCDP, and Plaintiffs provided that information too, within an hour. Ex. L. After Legislative Defendants filed their motion alleging that Plaintiffs had violated Local Rule 5.7, Plaintiffs asked Legislative Defendants to identify any other instance where they had requested information under the Local Rule, and in any event whether Legislative Defendants had any further request for information under the Local Rule. Ex. M. Legislative Defendants have not responded.

Finally, Plaintiffs' inadvertent failure to provide five backup files from Dr. Chen containing basic information about the enacted plans does not plausibly support a two-week extension for Legislative Defendants' expert reports. The "missing" files to which Legislative Defendants refer are five ".txt" files that listed North Carolina's counties, county groupings under the enacted plans, and other basic data that relates only to the enacted plans and *not* to any of Dr. Chen's simulations. To be clear, the failure to include these five files was inadvertent, and Plaintiffs sent the files to Legislative Defendants within two hours of being alerted that they were not included within Dr. Chen's backup materials.

Legislative Defendants' suggestion that Plaintiffs were somehow engaging in gamesmanship with respect to these files is absurd for multiple reasons. First, Plaintiffs turned over thousands of backup files from Dr. Chen on April 8 simultaneous with serving his report, and Plaintiffs would have had no reason to withhold these five files that do not even include information about Dr. Chen's simulations, but instead contain information only about the actual plans enacted by Legislative Defendants. Second, contrary to Legislative Defendants' assertions, the files could be easily recreated using specific instructions in Dr. Chen's code that was turned over on April 8.<sup>2</sup> Third, for three of the five files,<sup>3</sup> the data in the backup files (which was a table with a handful of columns) was replicated entirely in files that Plaintiffs did provide on April 8, meaning that Legislative Defendants had all of the data in these files all along. *Compare, e.g.,* Ex. N (file that Plaintiffs provided on April 8), *with* Ex. O (one of the five backup files that Plaintiffs provided on April 18).

Regardless, given that Plaintiffs sent the files on April 18 within *two hours* of learning from Legislative Defendants that they were not included within Dr. Chen's backup materials, Legislative Defendants cannot possibly claim prejudice. Legislative Defendants offer no explanation for how their experts were prejudiced in the least.

In short, in stark contrast to Legislative Defendants' deficient discovery responses, Plaintiffs devoted enormous resources and displayed exceptional diligence in responding to Legislative Defendants' broad discovery requests. All told, Plaintiffs produced nearly 10,000 documents totaling nearly 54,000 pages between March 20 and April 17, completing their production by the date the parties jointly set for the close of written discovery from Plaintiffs.

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<sup>2</sup> Legislative Defendants' statement that Dr. Chen's code contained "junk lines" that prevents it from "running successfully" is simply false.

<sup>3</sup> The other two files were simply lists of North Carolina's counties and the county grouping containing each county under the enacted plans.

Nothing about Plaintiffs' discovery responses warrants an extension.

**B. Legislative Defendants' Experts Have Suffered No Prejudice**

What is most striking about Legislative Defendants' motion, however, is what is *missing*: any specific description of any specific discovery information that is relevant to Legislative Defendants' expert reports, and as to which the timeline of Plaintiffs' productions has caused prejudice. This Court extended Plaintiffs' deadlines after Legislative Defendants refused to provide the addresses of incumbent legislators and to answer basic questions about the formulas for assessing partisanship that their mapmaker used in drawing the map. All of this was critical to Plaintiffs' experts. Legislative Defendants do not identify a *single* piece of information that they have been unable to obtain in discovery or were delayed in obtaining that has prejudiced their ability to prepare their expert reports by April 30.

Indeed, on March 30, Plaintiffs specifically offered to prioritize the production of any information that Legislative Defendants considered relevant to their expert reports, but Legislative Defendants never responded to the offer. Ex. D at 2. The failure to respond to this offer alone should preclude Legislative Defendants from claiming prejudice now. And it confirms that the pace of discovery has not impacted Legislative Defendants' expert reports, and that this is just a manufactured objection in an effort to escape the consequences of Legislative Defendants' own discovery misconduct.

The Court should deny the motion.

Respectfully submitted this the 25th day of April, 2019

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This the 25th day of April, 2019.

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# **EXHIBIT A**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED  
2019 FEB 15 PM 4:02  
WAKE COUNTY, C.C.C.  
*LM*

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

COMMON CAUSE, et al.,

BY \_\_\_\_\_

Plaintiffs,

v.

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

Defendants.

**STIPULATED PROPOSED  
CASE MANAGEMENT  
ORDER**

**(OTHR)**

Pursuant to the Court's Order of February 1, 2019, the parties have conferred and agreed upon a case management schedule. The parties have all agreed to forego dispositive pre-trial motions, and accordingly the parties' agreed-upon schedule does not include any deadlines for dispositive motions. The parties have agreed upon the below schedule and deadlines:

Event	Agreed-Upon Dates
Completion of Written Discovery from Current Defendants, Consistent with the N.C. Rules of Civil Procedure	March 20, 2019
Plaintiffs' Expert Reports	March 22, 2019
Completion of Written Discovery from All Other Parties and All Third Parties, Consistent with the N.C. Rules of Civil Procedure	April 17, 2019
Defendants' Expert Reports	April 30, 2019
Completion of Fact Discovery	May 17, 2019
Plaintiffs' Rebuttal Reports	May 31, 2019
Exchange Deposition Designations	June 12, 2019
Expert Witness Deposition Deadline	June 14, 2019
Exchange Deposition Counter-Designations and Objections to Designations	June 19, 2019
Motions in Limine/Motions to Exclude under N.C. Rule 702(a)	June 21, 2019
File Objections to Deposition Counter-Designations	June 26, 2019

Confer Regarding Objections to Deposition Designations	June 28, 2019
Opposition to Motions in Limine/Motions to Exclude under N.C. Rule 702(a)	July 1, 2019
All Parties Exchange Witness and Exhibit Lists	July 1, 2019
Submit to the Court a Conformed Set of Agreed Deposition Designations	July 3, 2019
Submit to the Court for Resolution Unresolved Deposition Designation Objections.	July 3, 2019
Pretrial Stipulations	July 8, 2019
File Objections to Exhibits	July 8, 2019
Trial Briefs	July 8, 2019
Pre-Trial Hearing on Outstanding Motions	July 10, 2019
Deliver to the Court Hard Copy Pre-Marked, Indexed Exhibits	July 12, 2019
Trial Begins	July 15, 2019
Post-Trial Briefs	10 days after conclusion of trial

\* \* \*

WHEREFORE, the parties request that the Court enter an order adopting the case management schedule set forth above.

Respectfully submitted this the 15th day of February, 2019.

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*Counsel for State Defendants*

**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:

Amar Majmundar  
Stephanie A. Brennan  
NC Department of Justice  
P.O. Box 629  
114 W. Edenton St.  
Raleigh, NC 27602  
amajmundar@ncdoj.gov  
sbrennan@ncdoj.gov  
*Counsel for the State of North Carolina and State Board of  
Elections and Ethics Enforcement and its members*

Phillip J. Strach  
Michael McKnight  
Alyssa Riggins  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
4208 Six Forks Road, Suite 1100  
Raleigh, NC 27609  
Phillip.strach@ogletree.com  
Michael.mcknight@ogletree.com  
Alyssa.riggins@ogletree.com

E. Mark Braden  
Richard B. Raile  
Trevor M. Stanley  
Baker & Hostetler, LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave., N.W.  
Washington, DC 20036-5403  
rraile@bakerlaw.com  
mbraden@bakerlaw.com  
tstanley@bakerlaw.com  
*Counsel for the Legislative Defendants*

This the 15th day of February, 2019.

Caroline P. Mackie with permission  
Caroline P. Mackie by EMM  
NC State Bar No.  
53227

# **EXHIBIT B**

## Jacobson, Daniel

---

**From:** Jones, Stanton  
**Sent:** Monday, April 1, 2019 5:40 PM  
**To:** Strach, Phillip J.; 'Stanley, Trevor M.'; McKnight, Michael D.; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook  
**Cc:** Eddie Speas; Mackie, Caroline P.; melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Robinson, John  
**Subject:** RE: Common Cause v. Lewis: Consent Protective Order

Thanks Phil. The record speaks for itself.

We will countersign.

Can the state defendants' and intervenors' respective counsel also sign and send us your signature pages?

We'll file the fully executed PDF as a stipulated order once we receive the signature pages for all parties.

Regards,  
Stanton

---

**From:** Strach, Phillip J. [mailto:phil.strach@ogletree.com]  
**Sent:** Monday, April 01, 2019 5:25 PM  
**To:** Jones, Stanton; 'Stanley, Trevor M.'; McKnight, Michael D.; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook  
**Cc:** Eddie Speas; Mackie, Caroline P.; melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Robinson, John  
**Subject:** RE: Common Cause v. Lewis: Consent Protective Order

Stanton: our consent was clear several weeks ago when we indicated we had only minor suggestions to the order regarding the disposal of confidential information after the case is over. Attached is a formally executed version.

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

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

---

**From:** Jones, Stanton <Stanton.Jones@arnoldporter.com>  
**Sent:** Monday, April 01, 2019 10:37 AM  
**To:** Strach, Phillip J. <Phil.Strach@ogletreedekins.com>; 'Stanley, Trevor M.' <tstanley@bakerlaw.com>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>  
**Cc:** Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; AKhanna@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Robinson, John <John.Robinson@arnoldporter.com>  
**Subject:** RE: Common Cause v. Lewis: Consent Protective Order



Phil and Trevor, we are still waiting to hear from you on the final protective order regarding confidentiality of discovery material, which Dan sent below and I've reattached here for convenience. Please let us know whether legislative defendants consent.

Counsel for the state defendants and intervenors, please let us know whether you consent as well.

We'd like to get this signed today without further delay.

Regards,  
Stanton

---

**From:** Jacobson, Daniel  
**Sent:** Friday, March 29, 2019 9:42 PM  
**To:** 'Stanley, Trevor M.'  
**Cc:** Theodore, Elisabeth; Jones, Stanton; McKnight, Michael D.; Strach, Phillip J.; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Eddie Speas; Mackie, Caroline P.; [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Riggins, Alyssa; John Branch; [dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook; Robinson, John  
**Subject:** RE: Common Cause v. Lewis: Consent Protective Order

Attached is a final of the protective order. Please let us know whether Legislative Defendants consent.

Counsel for Intervenors and State Defendants, please let us know whether you consent as well.

Best,  
Dan

---

Daniel Jacobson  
Senior Associate

**Arnold & Porter Kaye Scholer LLP**  
601 Massachusetts Ave., NW | Washington, DC 20001-3743  
[daniel.jacobson@apks.com](mailto:daniel.jacobson@apks.com) | [www.apks.com](http://www.apks.com)

---

**From:** Stanley, Trevor M. [<mailto:tstanley@bakerlaw.com>]  
**Sent:** Friday, March 29, 2019 9:31 PM  
**To:** Jacobson, Daniel  
**Cc:** Theodore, Elisabeth; Jones, Stanton; McKnight, Michael D.; Strach, Phillip J.; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Eddie Speas; Mackie, Caroline P.; [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Riggins, Alyssa; John Branch; [dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook  
**Subject:** Re: Common Cause v. Lewis: Consent Protective Order

I believe there was one more typo in the redline.

On Mar 29, 2019, at 9:29 PM, Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)> wrote:

Trevor, just to clarify, which non-substantive edits did you mean? The only edits that we saw in the version you sent yesterday were the substantive edits to paragraph 17 and correcting one typo in paragraph 3. Let me know if there were others, otherwise I can go ahead and send you the final.

Best,

Dan

---

Daniel Jacobson  
Associate

**Arnold & Porter Kaye Scholer LLP**

601 Massachusetts Ave., NW | Washington, DC 20001-3743

[daniel.jacobson@apks.com](mailto:daniel.jacobson@apks.com) | [www.apks.com](http://www.apks.com)

---

**From:** Stanley, Trevor M. [<mailto:tstanley@bakerlaw.com>]

**Sent:** Friday, March 29, 2019 8:39 PM

**To:** Theodore, Elisabeth

**Cc:** Jones, Stanton; McKnight, Michael D.; Strach, Phillip J.; Jacobson, Daniel; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Eddie Speas; Mackie, Caroline P.; [melias@perkinscoie.com](mailto:melias@perkinscoie.com);

[zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Riggins, Alyssa; John Branch; [dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook

**Subject:** RE: Common Cause v. Lewis: Consent Protective Order

Hi Elisabeth,

Could you please finalize the copy and circulate? I just want to confirm you accept all the non-substantive edits.

Trevor

---

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

**Sent:** Thursday, March 28, 2019 2:52 PM

**To:** Stanley, Trevor M. <[tstanley@bakerlaw.com](mailto:tstanley@bakerlaw.com)>

**Cc:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>; McKnight, Michael D. <[michael.mcknight@ogletree.com](mailto:michael.mcknight@ogletree.com)>;

Strach, Phillip J. <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)>; Brennan, Stephanie <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>; Braden, E. Mark <[MBraden@bakerlaw.com](mailto:MBraden@bakerlaw.com)>; Raile, Richard <[rRaile@bakerlaw.com](mailto:rRaile@bakerlaw.com)>;

Majmundar, Amar <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; Eddie Speas <[espeas@poynerspruill.com](mailto:espeas@poynerspruill.com)>; Mackie, Caroline P.

<[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>; [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com); Riggins, Alyssa

<[Alyssa.Riggins@ogletreedeakins.com](mailto:Alyssa.Riggins@ogletreedeakins.com)>; John Branch <[JBranch@shanahanmcdougal.com](mailto:JBranch@shanahanmcdougal.com)>;

[dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook <[NPencook@shanahanmcdougal.com](mailto:NPencook@shanahanmcdougal.com)>

**Subject:** RE: Common Cause v. Lewis: Consent Protective Order

Hi Trevor,

Thanks for these revisions. We'd like to make two changes, reflected in redline in the attached on top of your redline. First, we've added the option of destroy or return, because we prefer to return rather than destroy any original documents we receive (as opposed to electronic copies). Second, we don't believe it's practical or reasonable to require the parties to petition the court for permission to retain work product that may reference confidential material. The paragraph that you added would appear, for example, to require the destruction of draft briefs, deposition transcripts, etc., absent a petition to the court. The more standard approach in our experience is that counsel may retain work product, but that the work product will remain subject to the terms of the protective order to the extent it contains confidential material. We've made edits to reflect this approach. Let us know if you would like to discuss.

Best,  
Elisabeth

---

**From:** Stanley, Trevor M. [<mailto:tstanley@bakerlaw.com>]  
**Sent:** Thursday, March 28, 2019 11:56 AM  
**To:** Theodore, Elisabeth  
**Cc:** Jones, Stanton; McKnight, Michael D.; Strach, Phillip J.; Jacobson, Daniel; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Eddie Speas; Mackie, Caroline P.; [melias@perkinscoie.com](mailto:melias@perkinscoie.com);  
[zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Riggins, Alyssa; John Branch; [dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook  
**Subject:** RE: Common Cause v. Lewis: Consent Protective Order

Hi Elisabeth,

Please find attached a revised consent protective order. Please let us know if you have any questions.

Trevor

---

**From:** Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>  
**Sent:** Monday, March 25, 2019 4:57 PM  
**To:** Stanley, Trevor M. <[tstanley@bakerlaw.com](mailto:tstanley@bakerlaw.com)>  
**Cc:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>; McKnight, Michael D. <[michael.mcknight@ogletree.com](mailto:michael.mcknight@ogletree.com)>; Strach, Phillip J. <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)>; Brennan, Stephanie <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>; Braden, E. Mark <[MBraden@bakerlaw.com](mailto:MBraden@bakerlaw.com)>; Raile, Richard <[rraile@bakerlaw.com](mailto:rraile@bakerlaw.com)>; Majmundar, Amar <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; Eddie Speas <[espeas@poynerspruill.com](mailto:espeas@poynerspruill.com)>; Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>; [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com); Riggins, Alyssa <[Alyssa.Riggins@ogletreedeakins.com](mailto:Alyssa.Riggins@ogletreedeakins.com)>; John Branch <[JBranch@shanahanmcdougal.com](mailto:JBranch@shanahanmcdougal.com)>; [dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook <[NPencook@shanahanmcdougal.com](mailto:NPencook@shanahanmcdougal.com)>  
**Subject:** RE: Common Cause v. Lewis: Consent Protective Order

Hi Trevor,

At our meet-and-confer on March 15, Legislative Defendants indicated that they intended to propose a few changes to the consent protective order. Do you still intend to do so, and when do you anticipate sending the proposed revision?

Thanks,  
Elisabeth

---

**From:** Stanley, Trevor M. [<mailto:tstanley@bakerlaw.com>]  
**Sent:** Thursday, March 14, 2019 2:19 PM  
**To:** Theodore, Elisabeth  
**Cc:** Jones, Stanton; McKnight, Michael D.; Strach, Phillip J.; Jacobson, Daniel; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Eddie Speas; Mackie, Caroline P.; [melias@perkinscoie.com](mailto:melias@perkinscoie.com);  
[zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Riggins, Alyssa; John Branch; [dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook  
**Subject:** Re: Common Cause v. Lewis: Consent Protective Order

Hi Elisabeth,

Could we schedule this discussion as part of our 3 pm call tomorrow? Also, we intend to produce documents today.

Although we have not signed the protective order, yet, could we have written confirmation that any documents produced will be produced subject to the terms of the protective order unless the parties agree, in writing, that such protective order will never go into effect?

Trevor

On Mar 14, 2019, at 1:37 PM, Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)> wrote:

All,

Attached is a protective order we have drafted to cover the production of confidential information in this litigation by the parties or by third parties who have been subpoenaed. We hope the parties can agree on this and then propose it to the court as a stipulated order. We'd propose to discuss this on our call tomorrow, to the extent discussion is needed.

Best,  
Elisabeth

---

**From:** Stanley, Trevor M. [<mailto:tstanley@bakerlaw.com>]

**Sent:** Wednesday, March 13, 2019 1:21 PM

**To:** Jones, Stanton

**Cc:** Theodore, Elisabeth; McKnight, Michael D.; Strach, Phillip J.; Jacobson, Daniel; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Eddie Speas; Mackie, Caroline P.; [melias@perkinscoie.com](mailto:melias@perkinscoie.com);

[zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Riggins, Alyssa; John Branch; [dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook

**Subject:** Re: Common Cause v. Lewis: Plaintiffs' Fourth Set of Discovery Requests to Legislative Defendants

Ok, thanks.

Trevor

On Mar 13, 2019, at 1:20 PM, Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)> wrote:

No problem. Let's do 3pm. Same dial in below. Thanks.

---

**From:** Stanley, Trevor M. [<mailto:tstanley@bakerlaw.com>]

**Sent:** Wednesday, March 13, 2019 1:18 PM

**To:** Jones, Stanton

**Cc:** Theodore, Elisabeth; McKnight, Michael D.; Strach, Phillip J.; Jacobson, Daniel; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Eddie Speas; Mackie, Caroline P.; [melias@perkinscoie.com](mailto:melias@perkinscoie.com);

[zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Riggins, Alyssa; John Branch; [dworrell@shanahanmcdougal.com](mailto:dworrell@shanahanmcdougal.com); Nate Pencook

**Subject:** Re: Common Cause v. Lewis: Plaintiffs' Fourth Set of Discovery Requests to Legislative Defendants

Stanton,

Since I'm holding down the fort while everyone is in trial, could we do a time in the afternoon? We think trial may be done Thursday night or Friday morning, so an afternoon time would allow for quicker decision making.

Trevor

On Mar 13, 2019, at 1:03 PM, Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)> wrote:

Great, let's do 10am. We can use this dial in: 866-802-1366, 73918062#.

Thanks.

Stanton

---

**From:** Stanley, Trevor M. [<mailto:tstanley@bakerlaw.com>]

**Sent:** Wednesday, March 13, 2019 12:03 PM

# **EXHIBIT C**

## Jacobson, Daniel

---

**From:** Mackie, Caroline P. <CMackie@poynerspruill.com>  
**Sent:** Wednesday, March 27, 2019 3:36 PM  
**To:** Strach, Phillip J.; 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  
**Cc:** Speas, Edwin M.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.  
**Subject:** RE: Common Cause v. Lewis

Phil,

We are in receipt of the letter you sent yesterday regarding NCDP's discovery responses. We are preparing a written response to your letter, and will be glad to meet and confer on these issues. In the meantime, we wanted to address the issue you raise in the letter regarding the production of NCDP documents. As you know, several weeks ago we sent you a draft protective order to govern plaintiffs' production of documents. On the March 15 meet and confer, Trevor indicated that Legislative Defendants thought we could reach agreement on the protective order but that you would propose a few revisions. We never heard back from you, and two days ago (March 25) we followed up on this issue again but have not yet heard back.

Once we have an agreement on the protective order, we can begin the rolling production of NCDP documents.

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

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# **EXHIBIT D**



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.

March 30, 2019

Page 2

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

March 30, 2019

Page 3

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

Page 4

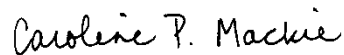
**DOCUMENT REQUEST NO. 4:** NCDP objected to this request as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. We mistakenly interpreted the request to relate to legislative districts but now see that it requests documents “not involving districts” 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 E**

## Jacobson, Daniel

---

**From:** Jones, Stanton  
**Sent:** Monday, April 1, 2019 10:41 AM  
**To:** Strach, Phillip J.; Stanley, Trevor M.  
**Cc:** Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Cox, Paul; Speas, Edwin M.; Mackie, Caroline P.; melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.  
**Subject:** RE: Common Cause v. Lewis

Phil and Trevor, per the letter Caroline sent below, please let us know if you'd like to meet and confer this week.

Regards,  
Stanton

---

**From:** Mackie, Caroline P. [mailto:CMackie@poynerspruill.com]  
**Sent:** Saturday, March 30, 2019 2:19 PM  
**To:** Strach, Phillip J.  
**Cc:** Speas, Edwin M.; zzz.External.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

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

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

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# **EXHIBIT F**



## Jacobson, Daniel

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**From:** Strach, Phillip J. <phil.strach@ogletree.com>  
**Sent:** Monday, April 1, 2019 5:19 PM  
**To:** Jones, Stanton; Stanley, Trevor M.  
**Cc:** Theodore, Elisabeth; McKnight, Michael D.; Jacobson, Daniel; Brennan, Stephanie; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Eddie Speas; Mackie, Caroline P.; melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Riggins, Alyssa; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; pcox@ncdoj.gov  
**Subject:** RE: Common Cause v. Lewis: Plaintiffs' Fourth Set of Discovery Requests to Legislative Defendants

Stanton: we agree to the proposal as set out in your March 25 email below. Thanks. Phil

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

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

---

**From:** Jones, Stanton <Stanton.Jones@arnoldporter.com>  
**Sent:** Saturday, March 30, 2019 11:27 AM  
**To:** Stanley, Trevor M. <tstanley@bakerlaw.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>  
**Cc:** Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; AKhanna@perkinscoie.com; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; pcox@ncdoj.gov  
**Subject:** Re: Common Cause v. Lewis: Plaintiffs' Fourth Set of Discovery Requests to Legislative Defendants

Phil and Trevor, we still have not received any response from you to my emails below concerning our proposed approach — which we originally proposed during our March 15 meet and confer and revised slightly last week in light of the court's order — for the exchange of experts' backup materials including computer code. Please advise.

Sent from my iPhone

On Mar 25, 2019, at 4:55 PM, Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)> wrote:

Phil and Trevor, in light of today's order, we now propose that (1) each side produces its experts' backup data including computer code simultaneously with serving the experts' reports, and (2) both sides forgo discovery into communications between experts and lawyers, instead relying on assumptions stated in the expert reports themselves, the backup materials produced simultaneously with the reports, and asking questions at depositions. This exchange would be in lieu of responses to the parties' respective discovery requests pertaining to expert materials and information. Please let me know whether legislative defendants agree.

To the extent any other defendant intends to serve expert reports, please let me know whether you agree to the above proposal.

# **EXHIBIT G**

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

*Attorneys at Law*

4208 Six Forks Road, Suite 1100  
Raleigh, NC 27609  
Telephone: 919-787-9700  
Facsimile: 919-783-9412  
www.ogletree.com

Phillip J. Strach  
919-789-3179  
phillip.strach@ogletree.com

April 15, 2019

**Via Email**

R. Stanton Jones  
Arnold & Porter  
601 Massachusetts Ave., NW  
Washington, DC 20001  
Stanton.jones@arnoldporter.com

RE: Common Cause v. Lewis  
18-cvs-14001  
Timing and Deficiencies of Plaintiffs Discovery Responses

Dear Counsel:

We write today to address the inadequacies of Plaintiffs discovery responses and rolling production for all Plaintiffs. Plaintiffs dilatory tactics and refusal to timely produce or supplement documents have prejudiced Legislative Defendants ability to complete their expert reports within the time specified by the case management order.

As a reminder, Defendants served Interrogatories and Requests for Production of Documents on Plaintiffs on February 15, 2019. Plaintiffs served written responses on Legislative Defendants on the evening of March 18th, but failed to produce a single requested document. Instead, counsel indicated that Plaintiffs in general would begin a rolling document production this week without specifying which Plaintiffs would begin a rolling production, a date expected for the beginning of the rolling production, the time intervals for the rolling production, or an estimated end date for the rolling production.

Given the numerous responsive documents at issue in this case, Legislative Defendants did not, and still do not, object to the concept of a rolling production. However, given that nearly a month has passed without an end in sight, or any communication from Plaintiffs counsel about when we can expect to receive the entirety of their production, Legislative Defendants must object to the procedure and manner in which these documents have been produced.

While Legislative Defendants began receiving productions from some Individual Plaintiffs and Common Cause on March 20th, we received no productions from the North Carolina Democratic Party until April 1st, two weeks after receiving written responses from the organization. In fact, documents were only produced after Plaintiffs counsel stated, in response to our deficiency letter that documents were being withheld due to the absence of a protective order. This was unusual at best

April 15, 2019

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since none of NCDP's responses to written discovery indicated that documents were being withheld on this basis. Supplemental productions have continued even as recently as a few days ago, with NCDP producing thousands of additional documents, even as Legislative Defendants are preparing expert reports. Plaintiffs have failed to indicate if we have received the entirety of responsive documents for NCDP, or any other Plaintiff in this matter, or, if we have not, when we can expect them.

To date, ten Plaintiffs have failed to produce any documents. The productions received to date for the remaining Plaintiffs are deficient and similarly prejudicial to Legislative Defendants. Most of the documents produced are incomplete, either because they contain missing images or graphics, or because the scan quality of the images was so poor that text is completely illegible. Processing errors have also contributed to the deficiency. Many documents have text running off of the page, some pages of documents were replaced with a page containing the phrase "Error Processing page," and in one instance, nearly an entire production from one of the Plaintiffs contained documents where the text was turned to code.

Legislative Defendants are willing to continue to work with Plaintiffs on these deficiencies and a further schedule for completing the rolling production. However, given the slow pace of Plaintiffs production, the failure to produce any documents for numerous Plaintiffs, and the deficient and incomplete nature of the documents produced to Legislative Defendants, we respectfully request that you consent to a two-week extension on our expert report deadline. This extension will allow us to work with you to fix these deficiencies, and ensure that we are not further prejudiced by the failure of Plaintiffs to produce documents. Please let us know if you consent to this extension. If not, we plan to bring this to the Court's attention at the earliest possible date.

Sincerely,

/s/ Phillip J. Strach

Phillip J. Strach

PJS:amr

38155381.1

# **EXHIBIT H**

April 17, 2019

**VIA E-MAIL**

Phillip J. Strach  
Ogletree, Deakins, Nash,  
Smoak & Stewart, P.C.  
4208 Six Forks Road  
Suite 1100  
Raleigh, NC 27609  
phillip.strach@ogletree.com

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

Dear Mr. Strach:

I write in response to your letter of April 15, 2019, requesting a two-week extension for Legislative Defendants' expert reports based on purported deficiencies with Plaintiffs' document productions. Plaintiffs do not consent to such an extension. In response to Legislative Defendants' far-reaching discovery requests issued the same day to 39 Plaintiffs, 37 of whom are individual voters, we have diligently and timely produced tens of thousands of pages of documents in a short time. As of today, Plaintiffs' production will be complete, well in advance of the April 30 deadline for Legislative Defendants' expert reports. Plaintiffs' fulsome and timely discovery responses stand in stark contrast to Legislative Defendants' consistently deficient responses to Plaintiffs' discovery requests. Nothing justifies an extension of the agreed-upon April 30 deadline for Legislative Defendants' expert reports.

1. Legislative Defendants inexplicably delayed serving any discovery requests in this case for over three months. As you know, Plaintiffs filed this action on November 13, 2018. Plaintiffs served discovery requests on Legislative Defendants the same day, and moved to expedite the case a week later. We asked you on multiple occasions when Legislative Defendants would serve discovery requests on Plaintiffs, and you responded only that Legislative Defendants would do so "in due course." In the end, Legislative Defendants did not serve any discovery requests at all until February 15—more than three months after the complaint was filed. When Legislative Defendants finally served those requests on February 15, they included 39 sets of interrogatories and requests for

April 17, 2019

Page 2

production, which collectively totaled 505 interrogatories (many of which contain multiple sub-parts) and 513 requests for the production of documents.

2. Since receiving your discovery requests on February 15, Plaintiffs have demonstrated extraordinary diligence in responding in a timely manner. As you know, on March 18, we provided written objections and responses to the interrogatories and document requests on behalf of all Plaintiffs—the North Carolina Democratic Party, Common Cause, and the 37 individual Plaintiffs. Plaintiffs did not seek an extension of time to respond to the discovery requests. Two days later, we began rolling productions of materials from Plaintiffs, and within a week, we had produced 2,481 documents totaling 9,931 pages. In total, Plaintiffs have produced 9,910 documents totaling 53,941 pages. Underscoring Plaintiffs' exceptional diligence, attached to this letter is a table detailing the timing and volume of Plaintiffs' productions.

As you also know, the timeline by which NCDP began production of documents was dictated by Legislative Defendants' delay in finalizing the consent protective order governing treatment of confidential and highly confidential discovery material. We sent you a proposed protective order on March 14, *before* Plaintiffs' discovery responses were due. Having a protective order in place was of central concern to NCDP given the sensitive nature of much of the discovery you requested. During the parties' March 15 meet and confer, you indicated that you were amenable to the proposed protective order and would follow up with proposed edits. But you never followed up. On March 25, we contacted you again inquiring about the status of the proposed protective order and whether you still intended to send edits. Again, you did not respond. On March 27, after you sent a letter complaining about purported deficiencies in NCDP's discovery responses, Plaintiffs followed up again regarding the protective order, explaining that once the parties reached an agreement on the protective order NCDP would begin its rolling production of documents. Even then, Legislative Defendants did not agree to the protective order until April 1, after we followed up several more times. The rolling production of NCDP documents began the same day Legislative Defendants finally agreed to the protective order.

3. In all events, Plaintiffs' document productions will be completed by the agreed-upon April 17 deadline, 13 days before the agreed-upon April 30 deadline for Legislative Defendants' expert reports. By contrast, Legislative Defendants provided their supplemental discovery responses (which were themselves deficient) on April 3, only five days before Plaintiffs' expert reports were due on April 8. And the Court extended the time for Plaintiffs' expert reports to April 8 in the first place because Legislative Defendants had refused to conduct searches or produce responsive materials by the agreed-upon deadline for the completion of production by Legislative Defendants.

April 17, 2019

Page 3

Plaintiffs, however, have in all respects adhered to their discovery obligations within the time provided by the stipulated scheduling order.

4. Plaintiffs' productions of documents, which began on March 20 and has continued on a rolling basis through April 17, provides your experts more than enough time to incorporate any information in the productions relevant to their analysis—to the extent that anything in Plaintiffs' productions is actually relevant to your experts' work. A month before the deadline for your expert reports, in Caroline Mackie's letter to you of March 30, Plaintiffs offered to prioritize production of any specific types of information that were relevant to Legislative Defendants' experts. You never responded to this offer.

Moreover, the existing schedule provides you more time to incorporate these discovery responses than Plaintiffs received. While you assert that the timing of Plaintiffs' productions has "prejudiced Legislative Defendants' ability to complete their expert reports," your letter conspicuously offers no explanation as to *how* your experts have supposedly been prejudiced. Your letter does not even explain how Plaintiffs' document productions are relevant to your experts' reports at all—especially the productions by the handful of individual Plaintiffs whose documents are the focus of your complaints.

5. Your letter asserts, without elaboration, that "[m]ost of the documents produced" by Plaintiffs other than NCDP are "incomplete" due to purported formatting issues. To the contrary, your separate letters of recent days concerning purported deficiencies with various Plaintiffs' discovery responses have identified only a few anecdotal examples of formatting issues among the tens of thousands of pages that Plaintiffs have produced. In response to your deficiency letters, which you did not begin sending for the non-NCDP plaintiffs until April 11, Plaintiffs have produced supplemental versions of materials for which you identified legitimate formatting issues that impair understanding of the document.

None of these formatting issues—which are a byproduct of producing documents from individual voter Plaintiffs, many of them elderly, whose emails and documents must be collected individually rather than through modern e-discovery techniques—could possibly have prejudiced your ability to meet your April 30 deadline for expert reports. In any event, you offer no explanation for how these formatting issues impact your experts' work.

You first complain that your experts have been prejudiced by "missing images or graphics." But you do not identify any specific document containing a missing image that your experts would need for purposes of their reports, and it is patently obvious upon



April 17, 2019

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a review of the “missing images” you identify in your deficiency letters that the “missing images” are completely irrelevant to the work of your experts. For example, you complain in your April 15 deficiency letter regarding Mr. Gauck—who produced his documents on March 20—about “missing images” in NC-D-GAUCK-000074. That document is a news compilation sent from Amazon.com entitled “Most Read from The Washington Post.” The “missing images” on NC-D-GAUCK-000074 appear to be Amazon.com or Washington Post logos of some sort.

You next complain about “poor scan quality,” again not identifying any specific document where poor scan quality has actually impeded the work of your experts. Your deficiency letters again make clear that these documents are irrelevant to the work of your experts. For example, in your April 11 deficiency letter regarding Mr. Rumph—who produced his documents on March 21—you complain about “illegible” text on NC-D-Rumph 000001-03. NC-D-Rumph 00001-02 is a form receipt documenting, in perfectly legible text, that Mr. Rumph made a \$5 contribution to the National Democratic Redistricting Committee PAC to end gerrymandering. To the extent the order number, the reference to Mr. Rumph’s PayPal account, and certain other technical information in the email are hard to read, it is once again obvious that none of that technical information could possibly be relevant to the work of your experts, and your letter makes no attempt to argue otherwise. And NC-D-Rumph-00003, which is in fact legible, is simply a blast news compilation sent to Mr. Rumph from the Center for American Progress.

You finally complain about processing errors and a production from one Plaintiff with documents where “text was turned to code.” As for the documents that contained the phrase “error processing page,” we have reproduced those documents within 48 hours of your identifying them to us, by the April 17 deadline to complete written fact discovery. As for the emails where certain “text was turned to code,” which we assume refers to the production of Mr. Turner although you do not specify, that is the format in which Mr. Turner holds the emails, some of which date back to 2007. In any event, text was not “turned to code”; rather, there is computer code at the beginning of these documents, and text follows. These documents generally consist of blast emails with news compilations, and you do not identify any that are relevant to your experts.

We additionally note that, although we produced documents from these individual Plaintiffs beginning March 20, you waited until April 11 to send any deficiency letters identifying formatting issues, and even then sent only three such letters on that date. If your experts truly needed any of this information, your delay is difficult to comprehend.

April 17, 2019

Page 5

In any event, again, you do not provide any explanation how the documents of individual voter Plaintiffs is relevant at all to your expert reports.

Sincerely,

*/s/ R. Stanton Jones*  
R. Stanton Jones

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

April 17, 2019  
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**Attachment: Plaintiffs' Document Productions**

<b>Production Date</b>	<b>Plaintiff</b>	<b>Documents Produced</b>	<b>Total Pages of Documents Produced</b>
3/20/2019	McCracken	49	191
3/20/2019	Campbell	4	4
3/20/2019	D. Brown	36	206
3/20/2019	Gauck	24	142
3/20/2019	Smith	104	274
3/20/2019	Gates	68	782
3/20/2019	Barnes	29	155
3/20/2019	Peters	5	14
3/20/2019	Johnson	1	2
3/20/2019	Sloan	3	5
3/21/2019	Rumph	1	1
3/21/2019	DuBose	1	9
3/21/2019	Frey	54	289
3/21/2019	Parker	5	12
3/21/2019	Schaller	14	20
3/21/2019	Bradley	89	190
3/21/2019	McGrigor	2	3
3/21/2019	Brien	57	204
3/21/2019	Service	417	1044
3/22/2019	Common Cause	254	719
3/26/2019	Wolff	61	69
3/26/2019	Miller	58	1146
3/26/2019	Thomas	1263	3818
3/27/2019	Wischmann	144	632
3/27/2019	Sloan	1	2
3/29/2019	Balla	5	6
3/29/2019	Turner	211	1357
4/1/2019	Common Cause	173	407
<i>Legislative Defendants Agree to Protective Order</i>			
4/1/2019	NCDP	1455	7823
4/2/2019	NCDP	30	145
4/2/2019	Jordan	55	293

April 17, 2019

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4/2/2019	Barnes	1	2
4/2/2019	Wischmann	7	23
4/2/2019	Bradley	23	54
4/4/2019	NCDP	1313	7983
4/10/2019	Gauck	2	44
4/10/2019	Barnes	4	14
4/10/2019	Wischmann	5	19
4/11/2019	Person	14	37
4/12/2019	NCDP	969	7211
4/16/2019	Common Cause	36	245
4/16/2019	NCDP	2409	16181
4/16/2019	Machak	1	6
4/16/2019	J. Brown	146	1073
4/16/2019	Schaller	2	4
4/16/2019	Wischmann	2	18
4/16/2019	Harper	12	83
4/16/2019	Brien	6	17
4/16/2019	Thomas	209	641
4/17/2019	Common Cause	1	1
4/17/2019	Miller	11	94
4/17/2019	Rumph	3	9
4/17/2019	Frey	60	216
4/17/2019	Sloan	1	2
Total		9910	53941

# **EXHIBIT I**

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

*Attorneys at Law*

4208 Six Forks Road, Suite 1100  
Raleigh, NC 27609  
Telephone: 919-787-9700  
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Phillip J. Strach  
919-789-3179  
phillip.strach@ogletree.com

April 18, 2019

**Via Email (stanton.jones@arnoldporter.com)**

R. Stanton Jones  
Arnold & Porter  
601 Massachusetts Ave., NW  
Washington, DC 20001

RE: *Common Cause, et al. v. David R. Lewis, et al.*  
*Wake County Superior Court Case No.: 18-cvs-014001*  
*Deficiency of Dr. Chen s Data*

Dear Stanton:

We have reviewed the backup data produced with Dr. Chen s expert report pursuant to our agreement to disclose expert data and code. We have found that the following files are missing from Dr. Chen s backup data:

1. NCH/base/groups.txt
2. NCU/base/groups.txt
3. 'NCS/base1/counties.txt'
4. '/NCU/base/counties.txt'

Please correct these deficiencies immediately as the failure of Dr. Chen to produce a complete backup file prejudices Legislative Defendants experts ability to complete expert reports.

Sincerely,

/s/ Phillip J. Strach

Phillip J. Strach

PJS:amr

38210763.1

# **EXHIBIT J**

## Jacobson, Daniel

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**From:** Jones, Stanton  
**Sent:** Thursday, April 18, 2019 4:27 PM  
**To:** Strach, Phillip J.; Christine McCaffrey; rraile@bakerlaw.com; melias@perkinscoie.com; McKnight, Michael D.; Riggins, Alyssa; amajmundar@ncdoj.gov; pcox@ncdoj.gov; sbrennan@ncdoj.gov; tstanley@bakerlaw.com; mbraden@bakerlaw.com; Nate Pencook; John Branch  
**Cc:** cmackie@poynerspruill.com; Gersch, David P.; Theodore, Elisabeth; Jacobson, Daniel; espeas@poynerspruill.com; zzz.External.AKhanna@perkinscoie.com; zzz.External.ABranch@perkinscoie.com  
**Subject:** RE: Common Cause, et al. v. Representative David R. Lewis  
**Attachments:** Apr 18.zip

Phil:  
In response to the letter you attached below, Dr. Chen's computer code that we sent you on April 8 shows exactly how the .txt files you request were created, and the computer code can be used to recreate these files. In any event, these files are attached to this email. As you'll see, the files titled "counties.txt" are simply lists of all 100 counties in North Carolina, along with the specific county grouping each county is within in the 2017 House and Senate enacted plans. The files titled "groups.txt" contain basic data on the county groupings in the enacted plans. None of this data describes or contains any information regarding any of Dr. Chen's simulations; it is merely basic information about the enacted plans.

Regards,  
Stanton

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[Stanton Jones](#)  
Partner

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**From:** Strach, Phillip J. <phil.strach@ogletree.com>  
**Sent:** Thursday, April 18, 2019 2:41 PM  
**To:** Jones, Stanton <Stanton.Jones@arnoldporter.com>; Christine McCaffrey <CMcCaffrey@shanahanlawgroup.com>; rraile@bakerlaw.com; melias@perkinscoie.com; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; amajmundar@ncdoj.gov; pcox@ncdoj.gov; sbrennan@ncdoj.gov; tstanley@bakerlaw.com; mbraden@bakerlaw.com; Nate Pencook <NPencook@shanahanlawgroup.com>; John Branch <JBranch@shanahanlawgroup.com>  
**Cc:** cmackie@poynerspruill.com; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; espeas@poynerspruill.com; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>  
**Subject:** RE: Common Cause, et al. v. Representative David R. Lewis

Stanton: please see the attached letter. Thanks. Phil



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

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# **EXHIBIT K**

April 17, 2019

**VIA E-MAIL**

Philip J. Strach  
Ogletree, Deakins, Nash,  
Smoak & Stewart, P.C.  
4208 Six Forks Road, Suite 1100  
Raleigh, NC 27609  
phillip.strach@ogletree.com

Re: *Common Cause v. Lewis*, 18CV14001 (N.C. Super.) - Common Cause  
Discovery Responses

Dear Phil:

I write in response to your letter of April 11, 2019, concerning Common Cause's objections and responses to Legislative Defendants' first set of interrogatories and requests for production of documents.

As you know, Legislative Defendants did not serve any discovery requests in this case until February 15, 2019, more than three months after the complaint was filed. At multiple meet and confers before February 15, we asked when you would serve discovery requests and the reasons for delay, and you responded only that Legislative Defendants would serve discovery requests "in due course."

When Legislative Defendants finally served discovery requests on February 15, you served 39 sets of interrogatories and requests for production, which collectively totaled 505 interrogatories (many of which contain multiple sub-parts) and 513 requests for production. As you know, on March 18, we timely provided written objections and responses to these interrogatories and document requests on behalf of all Plaintiffs—the North Carolina Democratic Party, Common Cause, and the 37 individual Plaintiffs. Two days later, we began rolling productions of responsive materials from Plaintiffs, and within a week, we had produced 1,217 documents totaling 4,266 pages. To date, Plaintiffs have produced 9,834 documents totaling 53,619 pages, including 463 documents from Common Cause totaling 1,371 pages. We will complete our rolling

Philip J. Strach  
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production of responsive materials on behalf of all Plaintiffs by April 17, the agreed-upon deadline to finish written fact discovery.

Plaintiffs' responses to Legislative Defendants' far-reaching discovery requests have been in good faith, timely, and indeed exemplary. Plaintiffs' fulsome written responses and document productions—including those of Common Cause—stand in stark contrast to those of Legislative Defendants.

Below are responses to your specific inquiries concerning Common Cause's discovery responses. We are available to meet and confer if you so desire.

1. Privilege Log: In Caroline Mackie's letter to you of March 30, 2019, Plaintiffs requested to meet and confer with Legislative Defendants regarding the nature and scope of privilege logs for the case, pursuant to Wake County Superior Court Local Rule 5.1(d). In an e-mail two days later, Stanton Jones followed up requesting to meet and confer on the issues outlined in Ms. Mackie's letter. Despite Local Rule 5.1(d), which specifically encourages parties to meet and confer regarding privilege logs, Legislative Defendants never responded to Plaintiffs' request to meet and confer. Legislative Defendants did not raise the issue of privilege logs again until your April 11 letter. Common Cause provided a privilege log on April 15. Unlike Legislative Defendants' privilege log, Common Cause's privilege log provides information sufficient to identify the basis of the claimed privilege or protection for each document withheld.

2. Alleged "Failure to Produce Documents": As noted above, Common Cause has produced over 1,300 pages of responsive documents, beginning on March 22 and continuing thereafter on a rolling basis. As of the date of this letter, Common Cause has completed its document production.

3. Alleged "Failure to Identify Custodians": Your April 11 letter contends that Common Cause failed to comply with Local Rule 5.7, but that rule explicitly states that a party shall disclose custodians "upon request." Legislative Defendants never requested any information pursuant to Local Rule 5.7, never even citing Rule 5.7 in any communication until your April 11 letter described a purported "Failure to Identify Custodians" by Common Cause. We will construe your April 11 letter as a "request" pursuant to Rule 5.7 for the custodians from whom Common Cause is producing records. Common Cause has produced the following documents from the following custodians and non-custodial data sources:

CC-00001: Bob Philips - Executive Director, Common Cause North Carolina

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CC-00002 to CC-00574: Brent Laurenz - Director of Outreach & Special Projects, Common Cause North Carolina

CC-00575 to CC-00719: Press clippings, videos, and website postings downloaded from the Common Cause North Carolina website or collected from non-custodial repository of press releases

CC-00720 to CC01126: Bob Philips – Executive Director, Common Cause North Carolina

CC-1127 to CC-1321 Jane Pinsky - Director, NC Coalition for Lobbying & Governmental Reform, Common Cause North Carolina

5. Alleged “Failure to Produce Readable or Whole Documents”.<sup>1</sup>

A. Your April 11 letter identifies several mp4 audio files that you were unable to open from Common Cause’s original production. As of the date of this letter, Common Cause has re-produced those mp4 files in a readable format.

B. Your letter complains that Common Cause produced certain documents in formats that are unreadable, including files with the .DS\_Store, .drf, .DCC, .db, and .asc extensions. Common Cause produced these files in the same format as they were kept in the normal course of business. A quick Google search of these file extensions will reveal that several of the file-types you reference are systems files that do not contain any substantive content that is unique from other files with which they are associated. In other words, they are not independently responsive to any of Legislative Defendants’ discovery requests and are merely artifacts of other produced files.

C. Your letter demands that Common Cause produce “[a]ll emails” as well as screenshots of Dave’s Redistricting Software in “native format.” But Local Rule 5.7(c) expressly provides that parties need not produce such records in native format. Under Local Rule 5.7(c), a party need only produce documents “in a reasonably usable form or forms.” Local Rule 5.7(c) further indicates that “[t]he only documents that must be produced in their native format are those that are not in a reasonably usable form or forms when produced as PDF or TIFF files.” Both the emails and screenshot PDF files that Common Cause has produced are “reasonably usable,” and your letter does not contend otherwise. Moreover, Common Cause does not possess native versions of the Dave’s Redistricting Software screenshots that have already been produced to you. Those

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<sup>1</sup> Your April 11 letter does not include a paragraph 4.

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screenshots are the only record of the previous use of the Dave’s Redistricting Software in Common Cause’s possession, custody, or control. Regardless, the PDF files of emails and screenshots of Dave’s Redistricting Software files that already have been produced are readable and satisfy the requirements of discovery under the relevant rules.

D. As of the date of this letter, we have re-produced the map documents you referenced in the clearest form that exists within the possession, custody, or control of Common Cause.

6. “Specific Responses”:

**Interrogatory No. 1(d):** This interrogatory requests that Common Cause (i) provide “the full legal name of any other entity with which [Common Cause] shares board members, executive staff, and/or employees,” and (ii) “identify these shared individuals and the positions they hold in each entity.” As we have already indicated in our responses and objections, it is unduly burdensome for Common Cause to identify—for every member of its board and executive leadership—the names of “any other entity” on which that person serves as a board member or an employee. Legislative Defendants’ request also is not reasonably calculated to lead to the discovery of admissible evidence. The affiliations of Common Cause’s board members, staff, or employees with various other entities have no bearing on any issue in this case, and you have provided no basis to believe otherwise. 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.

**Interrogatory Nos. 1(e-f):** Interrogatory No. 1(e) requests a description of “all election-related activities” in which Common Cause engages. Interrogatory Nos. 1(f) and 1(g) request information related to Common Cause’s activities in relation to any “North Carolina Legislative race” and the “nature of any relationship” with “any” organization with which Common Cause has communicated regarding redistricting or “targeting of legislative races.” Your letter asserts that Common Cause’s response is incomplete because Common Cause “clearly participates in redistricting efforts and forums related to redistricting” and interacts with other organizations as part of this participation. Because other requests you served specifically mention redistricting, Common Cause’s response about “election-related” activities did not encompass redistricting. But in any event, as your letter acknowledges, Common Cause has already provided information about its redistricting-related activities in responses to Legislative Defendants’ other interrogatories, including Interrogatory Nos. 4, 6, 8, 9, and 10. Legislative

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Defendants' request for information concerning the participation of Common Cause's thousands of members in other organizations related to redistricting remains overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 2:** Your letter complains that Common Cause has not identified documents on which it intends to rely at trial. Common Cause will identify the materials it will rely on at trial in accordance with the stipulated scheduling order, which sets forth an agreed upon date for the exchange of exhibit lists.

**Interrogatory No. 3:** Common Cause has already explained that it is a statewide organization with supporters across the state. On March 22, we provided you a list with the number of Common Cause members in specific General Assembly districts (CC-00001), but you have now demanded a full membership list identifying individual members. Although we maintain that your request for a membership list is overbroad, Common Cause will produce a list of its members that provides each member's name and address. You have also demanded more information about events and presentations that Common Cause has held. In its original response, Common Cause listed all presentations it has made at events during the 2018 calendar year and has produced nonprivileged documents relating to those 18 listed events. Legislative Defendants' demand for information concerning other events Common Cause held prior to 2018 is overbroad, unduly burdensome, and disproportionate to the needs of the case. We are willing to meet and confer to discuss whether there is any specific information Common Cause can provide regarding pre-2018 events that is relevant.

**Interrogatory No. 5:** While your letter demands that Common Cause produce retainer agreements and legal bills, Legislative Defendants' request is an interrogatory that did not ask for the production of documents. Your letter also fails to address Common Cause's objections to this interrogatory. You do not explain why the information requested in Interrogatory No. 5 concerning Common Cause'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. Although this request appeared designed to harass, Common Cause's response was fully responsive. We are willing to meet and confer if Legislative Defendants would like an opportunity to explain why they believe additional information such as retainer agreements or legal bills has any bearing on the claims and defenses in this case and is not privileged.

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**Interrogatory No. 7:** Common Cause fully responded to this interrogatory in its original responses. Common Cause North Carolina was not a party to and did not testify in any lawsuit during the period of 2009-2013.

**Interrogatory Nos. 8-9:** As Common Cause indicated in its original responses to these interrogatories, Common Cause regularly communicates its opposition to partisan gerrymandering publicly and to its supporters. To address your new questions directly, Common Cause has sent its supporters email communications that reference Common Cause's role as a Plaintiff in this case. Common Cause has also referenced its participation in this case publicly, including on social media. Common Cause and its counsel have also spoken to Stephanie Hofeller regarding her possession of materials potentially relevant to this case.

**Interrogatory No. 10:** Your letter demands that Common Cause provide the dates of every North Carolina General Assembly hearing regarding the 2011 and 2017 redistricting that was attended by anyone "by or on behalf of" Common Cause, along with the identity of every Common Cause "representative" and the documents those representatives took or received. Plaintiffs have already stated that two Common Cause representatives, Bob Phillips and Jane Pinsky, attended all Raleigh-based hearings in 2011 and 2017. To the extent this interrogatory requests more information, it is unduly burdensome and overbroad. You are already in possession of the full transcripts of all public hearings during the relevant timeframe. Your request for other information about other Common Cause supporters or "representatives" is overbroad and not reasonably calculated to lead to the discovery of admissible evidence.

**Interrogatory No. 12<sup>2</sup>:** This interrogatory demands that Common Cause identify every person with whom Common Cause has communicated regarding redistricting and North Carolina legislative races during a span of over 10 years. The demand for such an identification is clearly overbroad and unduly burdensome. Nevertheless, Common Cause has produced responsive documents regarding relevant communications pursuant to N.C. R. Civ. P. 33(c).

**Document Request Nos. 1, 3, 4, 5, 6, 8, 9, 13, and 14:** As explained above, Common Cause has already gone above and beyond to produce documents

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<sup>2</sup> Although Legislative Defendants' April 11 letter appears to mistakenly refer to Interrogatory #11, we have construed the letter as referring to Interrogatory #12..



Philip J. Strach  
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responsive to Legislative Defendants' requests for production and has completed its production as of the date of this letter.

**Document Request No. 2:** Your letter states 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.

**Document Request Nos. 7, 10, 11, 12, and 17:** Common Cause is not presently aware of any documents in its possession, custody, or control that are responsive to these requests. Accordingly, Common Cause has not withheld any responsive documents on the basis of Common Cause's objections or asserted privileges.

\* \* \*

We are willing to meet and confer concerning the issues addressed above.

Sincerely,

*/s/ R. Stanton Jones*  
R. Stanton Jones

# **EXHIBIT L**

## Jacobson, Daniel

---

**From:** Jacobson, Daniel  
**Sent:** Wednesday, April 24, 2019 10:53 AM  
**To:** 'McKnight, Michael D.'; Jones, Stanton; Theodore, Elisabeth; 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; Robinson, John  
**Cc:** zzz.External.ABranch@perkinscoie.com; cmackie@poynerspruill.com; Gersch, David P.; espeas@poynerspruill.com; melias@perkinscoie.com; zzz.External.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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[Daniel Jacobson](#)

Senior Associate

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**From:** McKnight, Michael D. <michael.mcknight@ogletree.com>

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

**To:** 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

**Cc:** zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; cmackie@poynerspruill.com; Gersch, David P.

# **EXHIBIT M**

## Jacobson, Daniel

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**From:** Jones, Stanton  
**Sent:** Monday, April 22, 2019 4:08 PM  
**To:** Strach, Phillip J.; Stanley, Trevor M.  
**Cc:** Jacobson, Daniel; Eddie Speas; Mackie, Caroline P.; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com; Gersch, David P.; Theodore, Elisabeth; zzz.External.AKhanna@perkinscoie.com; Raile, Richard; Braden, E. Mark; McKnight, Michael D.; Riggins, Alyssa; 'Brennan, Stephanie'; Majmundar, Amar; Cox, Paul; JBranch@shanahanmcdougal.com; NPencook@shanahanmcdougal.com  
**Subject:** RE: Common Cause, et al. v. Lewis, et al. (18 CVS 14001)

Phil:  
I've taken off Ms. Myers and Mr. Steele. Your extension motion filed today asserts that Plaintiffs failed to produce search terms in violation of Local Civil Rule 5.7. Other than your request for a list of custodians for Common Cause's document production, we are not aware of any request from you for any other information pursuant to Rule 5.7. Can you please provide us with a copy of your prior request for such information (or alternatively let us know the date and time of your request so we can locate it ourselves)? Otherwise, if Legislative Defendants have any further request for information under Rule 5.7, let us know.

Regards,  
Stanton

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R. Stanton Jones

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**From:** Strach, Phillip J. <phil.strach@ogletree.com>  
**Sent:** Monday, April 22, 2019 2:18 PM  
**To:** Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Myers, Kellie Z. <Kellie.Z.Myers@nccourts.org>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; melias@perkinscoie.com; zzz.External.ABranch@perkinscoie.com <ABranch@perkinscoie.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; Steele, Adam H. <Adam.H.Steele@nccourts.org>; Majmundar, Amar <amajmundar@ncdoj.gov>; Cox, Paul <pcox@ncdoj.gov>; JBranch@shanahanmcdougal.com; NPencook@shanahanmcdougal.com  
**Subject:** Common Cause, et al. v. Lewis, et al. (18 CVS 14001)

Ms. Myers and Mr. Steele:

Attached is a copy of Legislative Defendants' Motion to Amend Case Management Order, which is being filed with the clerk today. Pursuant to Section 3 of the Case Management Order, Legislative Defendants provide the following information:

- (a) Legislative Defendants are aware that Plaintiffs do not consent to the relief requested in the motion.
- (b) Legislative Defendants request a hearing on the motion. Legislative Defendants are not aware when Plaintiffs are available, but Legislative Defendants are available for a hearing Thursday or Friday of this week.
- (c) Legislative Defendants do not know if Plaintiffs intend to file a written response to this motion.
- (d) Legislative Defendants note that the relief requested is an extension of the current expert report deadline. The deadline is currently April 30, 2019. Accordingly, Legislative Defendants respectfully request that the Court act on the motion prior to that date.

Regards,

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

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# **EXHIBIT N**

```
av <- aggregate(bafs[,c('pop')],by=list(bafs$vcodes),FUN=sum); names(av)<-c('code','pop'); av$district<-substr(av$code,1,3); av$vtid<-substr(av$code,5,99);
gw$splitvtids[i]<-sum(summary(as.factor(av$vtid),maxsum=99999)>1); gw$totvtids[i]<-length(unique(av$vtid)); gw$vtidfrags[i]<-dim(av)[1]
```

```
dists <- unique(bafs$District); ees<-(ee[ee$DISTRICT %in% as.numeric(dists),]); gw$reock[i]<-mean(ees$reock); gw$polby[i]<-mean(ees$polbypopper)
per <- unionSpatialPolygons(ees,rep(1,length(ees)))
gw$intlengths[i]<- gLength(ees) - gLength(per)
```

}  
}

gw

	group	counties	districts	pop	avgpop	splitctys	totctys	ctyfrags	splitmcds	totmcds	mcdfrags	splitvtids	totvtids	vtidfrags	reock	polby	intlengths	simdistricts	simpop	avgsimpop
1	1	3	4	781289	195322.2	1	2	3	3	18	21	0	114	114	0.5104779	0.3734172	130658.82	2	386069	193034.5
2	2	2	1	191556	191556.0	0	2	2	0	9	9	0	56	56	0.4452646	0.4826628	0.00	1	191556	191556.0
3	3	8	2	397291	198645.5	1	8	9	1	27	28	0	150	150	0.3563356	0.4060518	118315.55	2	397291	198645.5
4	4	4	1	197991	197991.0	0	4	4	0	29	29	0	61	61	0.4623755	0.2834763	0.00	1	197991	197991.0
5	5	3	1	191738	191738.0	0	3	3	0	26	26	0	73	73	0.5360400	0.4480706	0.00	1	191738	191738.0
6	6	6	1	182039	182039.0	0	6	6	0	39	39	0	94	94	0.2327150	0.1516616	0.00	1	182039	182039.0
7	7	4	2	397505	198752.5	1	4	5	1	37	38	2	99	101	0.3261053	0.2267184	279861.28	2	397505	198752.5
8	8	3	2	378148	189074.0	1	3	4	2	14	16	0	119	119	0.3950080	0.3125636	161854.89	2	378148	189074.0
9	9	2	2	379303	189651.5	1	2	3	4	21	25	0	95	95	0.4603726	0.4772538	66269.98	2	379303	189651.5
10	10	11	1	196665	196665.0	0	11	11	0	21	21	0	94	94	0.4612825	0.4635284	0.00	1	196665	196665.0
11	11	3	1	183118	183118.0	0	3	3	0	28	28	0	69	69	0.4782040	0.4169916	0.00	1	183118	183118.0
12	12	2	1	197306	197306.0	0	2	2	0	9	9	0	61	61	0.3881713	0.3680904	0.00	1	197306	197306.0
13	13	7	1	194102	194102.0	0	7	7	0	16	16	0	89	89	0.4228202	0.4637861	0.00	1	194102	194102.0
14	14	3	2	382429	191214.5	1	3	4	3	31	34	0	102	102	0.4006043	0.4082446	184677.56	2	382429	191214.5
15	15	2	1	192266	192266.0	0	2	2	0	25	25	0	67	67	0.4058717	0.3286742	0.00	1	192266	192266.0
16	16	2	2	366383	183191.5	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0	0	NaN
17	17	2	1	190676	190676.0	0	2	2	0	11	11	0	56	56	0.2694510	0.2743339	0.00	1	190676	190676.0
18	18	2	2	391910	195955.0	1	2	3	4	13	17	0	115	115	0.4463462	0.1865539	228546.22	2	391910	195955.0
19	19	6	3	559198	186399.3	1	6	8	2	50	52	0	123	123	0.3813488	0.3103535	275842.87	3	559198	186399.3
20	20	3	2	366967	183483.5	1	3	4	1	10	11	0	84	84	0.5064202	0.5114550	64681.41	2	366967	183483.5
21	21	3	1	192477	192477.0	0	3	3	0	25	25	0	75	75	0.4510731	0.3131967	0.00	1	192477	192477.0
22	22	2	5	961612	192322.4	1	2	6	6	20	30	1	209	210	0.4183405	0.2950488	530974.36	5	961612	192322.4
23	23	2	1	189510	189510.0	0	2	2	0	13	13	0	48	48	0.6131540	0.4438379	0.00	1	189510	189510.0
24	24	2	1	197843	197843.0	0	2	2	0	10	10	0	41	41	0.3342768	0.3410156	0.00	1	197843	197843.0
25	25	2	1	187925	187925.0	0	2	2	0	9	9	0	30	30	0.5181376	0.5494687	0.00	1	187925	187925.0
26	26	2	1	182118	182118.0	0	2	2	0	11	11	0	52	52	0.4557531	0.3485466	0.00	1	182118	182118.0
27	27	6	1	187477	187477.0	0	6	6	0	19	19	0	73	73	0.4142482	0.2408797	0.00	1	187477	187477.0
28	28	1	5	919628	183925.6	1	1	5	3	10	16	2	195	197	0.3638353	0.2835201	406821.75	5	919628	183925.6
29	29	2	1	199013	199013.0	0	2	2	0	20	20	0	67	67	0.3218212	0.2955184	0.00	1	199013	199013.0

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write.table(gw, "C:/Research/Dropbox/NCU/base/groups.txt",row.names=F,col.names=T,sep="\t")
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# **EXHIBIT O**

"group"	"counties"	"districts"	"pop"	"avgpop"	"splitctys"	"totctys"	"ctyfrags"	"splitmcds"	"totmcds"	"mcdfrags"	"splitvtds"	"totvtds"	"vtdfrags"	"reock"	"polsby"	"intl"			
1	3	4	781289	195322.25	1	2	3	18	21	0	114	114	0.510477872919242	0.373417160433179	130658.816879902	2	386069	193034.5	
2	2	1	191556	191556	0	2	2	0	9	9	0	56	56	0.445264609020632	0.482662786529591	0	1	191556	191556
3	8	2	397291	198645.5	1	8	9	1	27	28	0	150	150	0.356335598367651	0.406051762535014	118315.549735612	2	397291	198645.5
4	4	1	197991	197991	0	4	4	0	29	29	0	61	61	0.462375516949844	0.283476293869758	0	1	197991	197991
5	3	1	191738	191738	0	3	3	0	26	26	0	73	73	0.536040025982588	0.448070588113049	0	1	191738	191738
6	6	1	182039	182039	0	6	6	0	39	39	0	94	94	0.232715000033385	0.151661602427233	0	1	182039	182039
7	4	2	397505	198752.5	1	4	5	1	37	38	2	99	101	0.326105294263513	0.226718430595396	279861.279496199	2	397505	198752.5
8	3	2	378148	189074	1	3	4	2	14	16	0	119	119	0.395007966803214	0.312563598854484	161854.885163716	2	378148	189074
9	2	2	379303	189651.5	1	2	3	4	21	25	0	95	95	0.460372626429606	0.477253781530702	66269.983213491	2	379303	189651.5
10	11	1	196665	196665	0	11	11	0	21	21	0	94	94	0.461282549239569	0.463528416517867	0	1	196665	196665
11	3	1	183118	183118	0	3	3	0	28	28	0	69	69	0.478204017541947	0.416991554703148	0	1	183118	183118
12	2	1	197306	197306	0	2	2	0	9	9	0	61	61	0.388171290080961	0.368090417059499	0	1	197306	197306
13	7	1	194102	194102	0	7	7	0	16	16	0	89	89	0.422820189451485	0.463786141585479	0	1	194102	194102
14	3	2	382429	191214.5	1	3	4	3	31	34	0	102	102	0.40060432249265	0.408244605560218	184677.563007582	2	382429	191214.5
15	2	1	192266	192266	0	2	2	0	25	25	0	67	67	0.405871748737604	0.328674212692665	0	1	192266	192266
16	2	2	366383	183191.5	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	0	0	NA	NA	NA
17	2	1	190676	190676	0	2	2	0	11	11	0	56	56	0.269450997069714	0.274333933725016	0	1	190676	190676
18	2	2	391910	195955	1	2	3	4	13	17	0	115	115	0.446346170795255	0.186553895751175	228546.219116984	2	391910	195955
19	6	3	559198	186399.333333333	1	6	8	2	50	52	0	123	123	0.381348830253276	0.310353494184588	275842.87309789	3	559198	186399.333333333
20	3	2	366967	183483.5	1	3	4	1	10	11	0	84	84	0.506420199651646	0.511455018311056	64681.411912577	2	366967	183483.5
21	3	1	192477	192477	0	3	3	0	25	25	0	75	75	0.451073126077735	0.313196722030762	0	1	192477	192477
22	2	5	961612	192322.4	1	2	6	6	20	30	1	209	210	0.418340512759352	0.295048789053608	530974.357973161	5	961612	192322.4
23	2	1	189510	189510	0	2	2	0	13	13	0	48	48	0.613154014082459	0.44383789512453	0	1	189510	189510
24	2	1	197843	197843	0	2	2	0	10	10	0	41	41	0.334276805624841	0.341015604039295	0	1	197843	197843
25	2	1	187925	187925	0	2	2	0	9	9	0	30	30	0.518137620085852	0.54946866219214	0	1	187925	187925
26	2	1	182118	182118	0	2	2	0	11	11	0	52	52	0.455753134237041	0.348546561519122	0	1	182118	182118
27	6	1	187477	187477	0	6	6	0	19	19	0	73	73	0.414248229917646	0.240879725143552	0	1	187477	187477
28	1	5	919628	183925.6	1	1	5	3	10	16	2	195	197	0.363835341385654	0.283520146172819	406821.747666333	5	919628	183925.6
29	2	1	199013	199013	0	2	2	0	20	20	0	67	67	0.321821222156526	0.295518364405838	0	1	199013	199013