

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'
SUPPLEMENTAL REPLY
BRIEF CONCERNING
THEIR FIRST AND SECOND
MOTIONS TO COMPEL**

Plaintiffs submit this supplemental reply brief regarding their First and Second Motion to Compel in response to the brief submitted by Legislative Defendants earlier today (April 26). Principally, Plaintiffs are compelled to bring to the Court’s attention that, based on the files received from Stephanie Hofeller, the daughter of the late mapmaker Dr. Thomas Hofeller who drew the 2017 House and Senate Plans, it appears that Legislative Defendants’ representations regarding the timeframe in which the 2017 Plans were created are false.

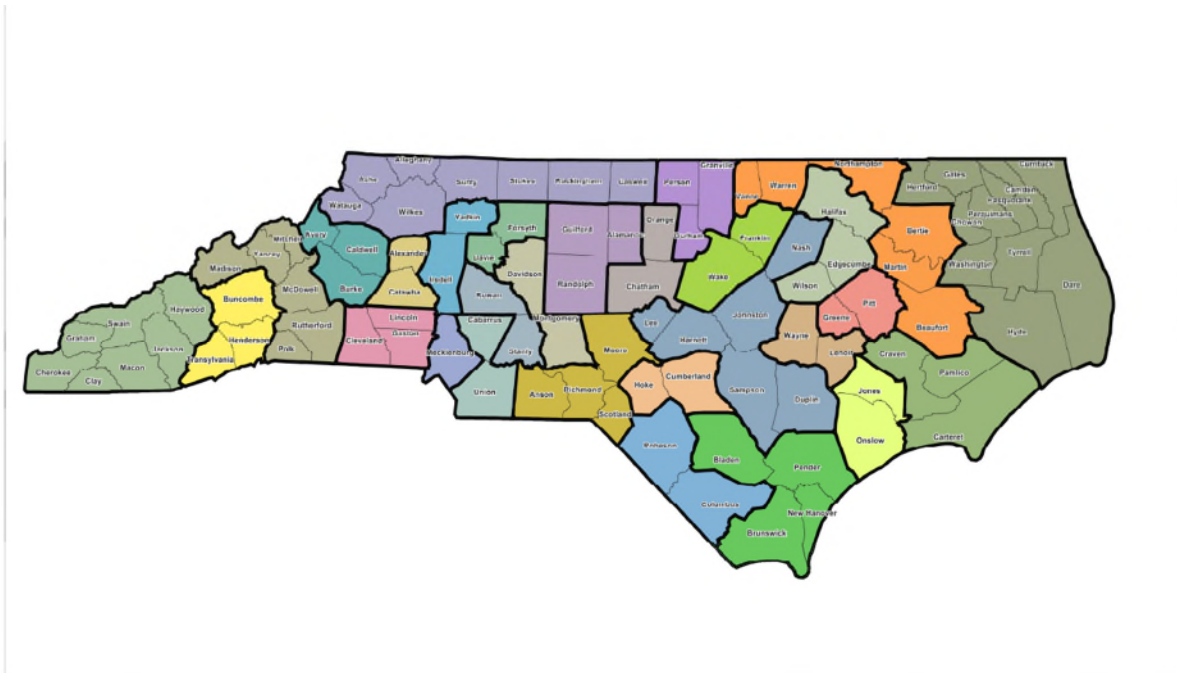
I. Draft Maps and Other Materials in Dr. Hofeller’s Files Reveal That the 2017 Plans Were Continuously Under Development Since at Least August 2016

In their brief filed earlier today, in an effort to justify limiting their search for documents to a narrow two-month window in summer 2017, Legislative Defendants represent that “no legislative redistricting was occurring prior to July 2017,” and that “July 1, 2017 to August 31, 2017 represented the period of time that the legislature was actually engaged in and preparing for legislative redistricting.” Legislative Defs. Br. at 4, 5. Similarly, in response to one of Plaintiffs’ interrogatories asking about any “draft or copy” of “all or parts of the 2017 Plans before August 10, 2017,” Legislative Defendants responded: “To the best recollection of [Legislative] Defendants, no drafts of the 2017 Plans existed prior to August 10, 2017.” Ex. A at 10 (Interrogatory No. 6).

The files that Plaintiffs received in response to their subpoena to Dr. Hofeller’s daughter contradict Legislative Defendants’ representations. The files reveal reams of draft maps—and extensive partisan scoring of draft maps—dating back to at least August 2016, nearly a full year before Legislative Defendants now say the redistricting began. As Plaintiffs previously explained in requesting that Legislative Defendants be ordered to extend their search at least back to August 2016, that is when the federal district court in the *Covington* case issued its decision finding a number of state House and Senate districts to be racially gerrymandered and

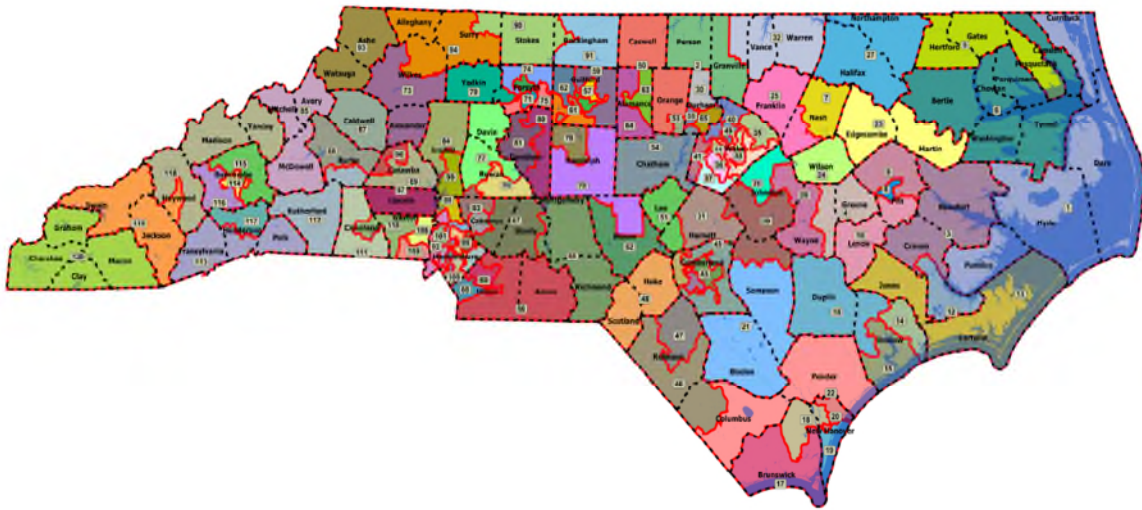
ordering that new maps be drawn. *Covington v. North Carolina*, 316 F.R.D. 117, 178 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017). The files received from Ms. Hofeller reveal numerous iterations of draft maps from August 2016 through June 2017, all before the point when Legislative Defendants claim work on the maps began or any draft maps existed. There are dozens upon dozens of such draft maps and spreadsheets with partisan scoring of those draft maps. Below is just a small sample of these files.¹

The map below is from a file titled “NC 2017 Senate Optimum,” and metadata reveals that it was last modified on August 20, 2016. The map contains proposed county clusters for the state Senate that appear to exactly match the county clusters in the enacted 2017 Senate Plan (which are different from the county clusters in the prior 2011 Senate Plan).

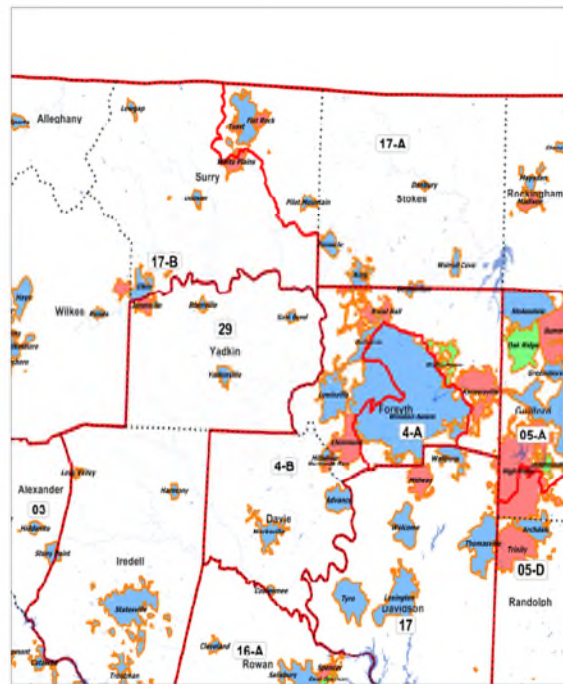
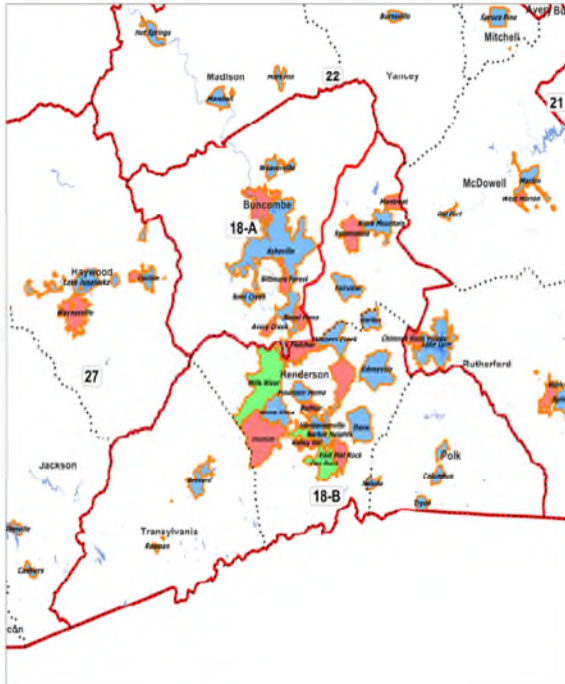


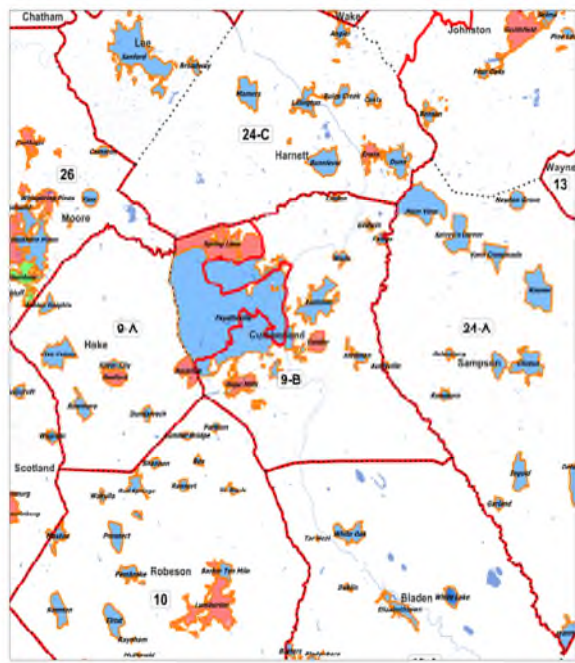
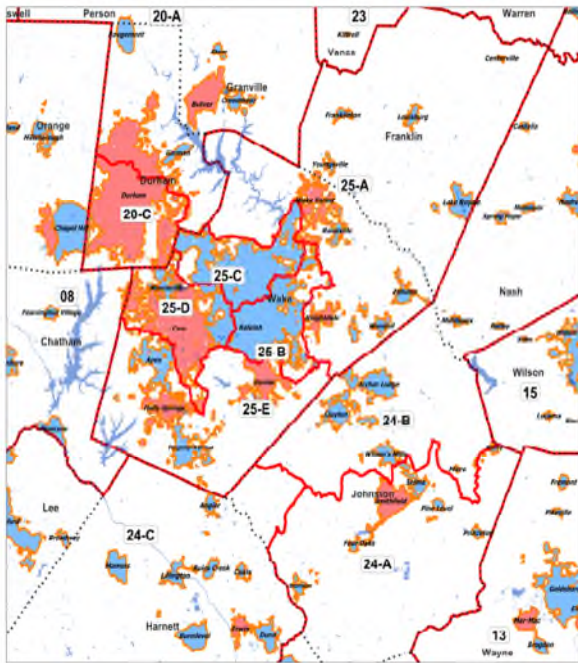
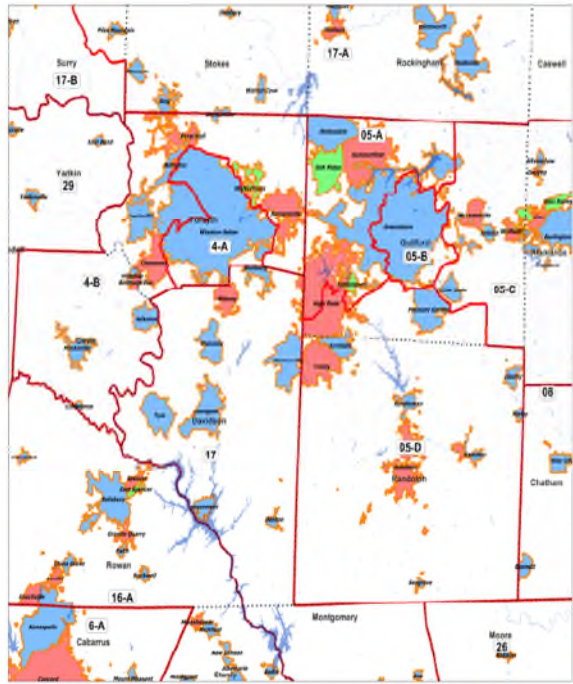
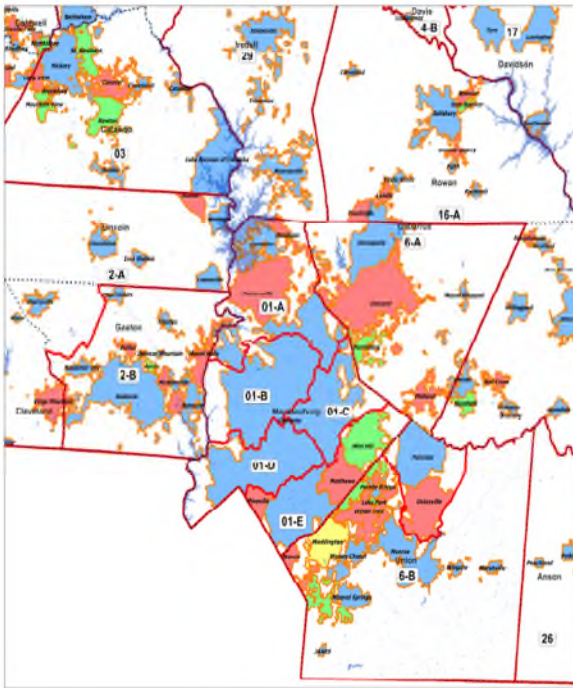
¹ On April 28, while Plaintiffs’ Motion for Clarification regarding the process for providing copies of the materials from Ms. Hofeller was fully briefed and pending, Plaintiffs e-mailed Defendants offering to provide copies—right now—of all of the files except the 1,001 specific files that Plaintiffs propose to filter because they contain sensitive personal information. *See* Ex. B. Neither Legislative Defendants nor Intervenor Defendants responded.

The map below is from a file titled “NC House 2017 PP2 Districts,” and metadata reveals that it was last modified on September 3, 2016. The county clusters in this map also appear to match the county clusters in the enacted 2017 House Plan (which are different from the county clusters in the prior 2011 House Plan), and some of the individual districts in this draft map appear to resemble the districts in the enacted 2017 House Plan.

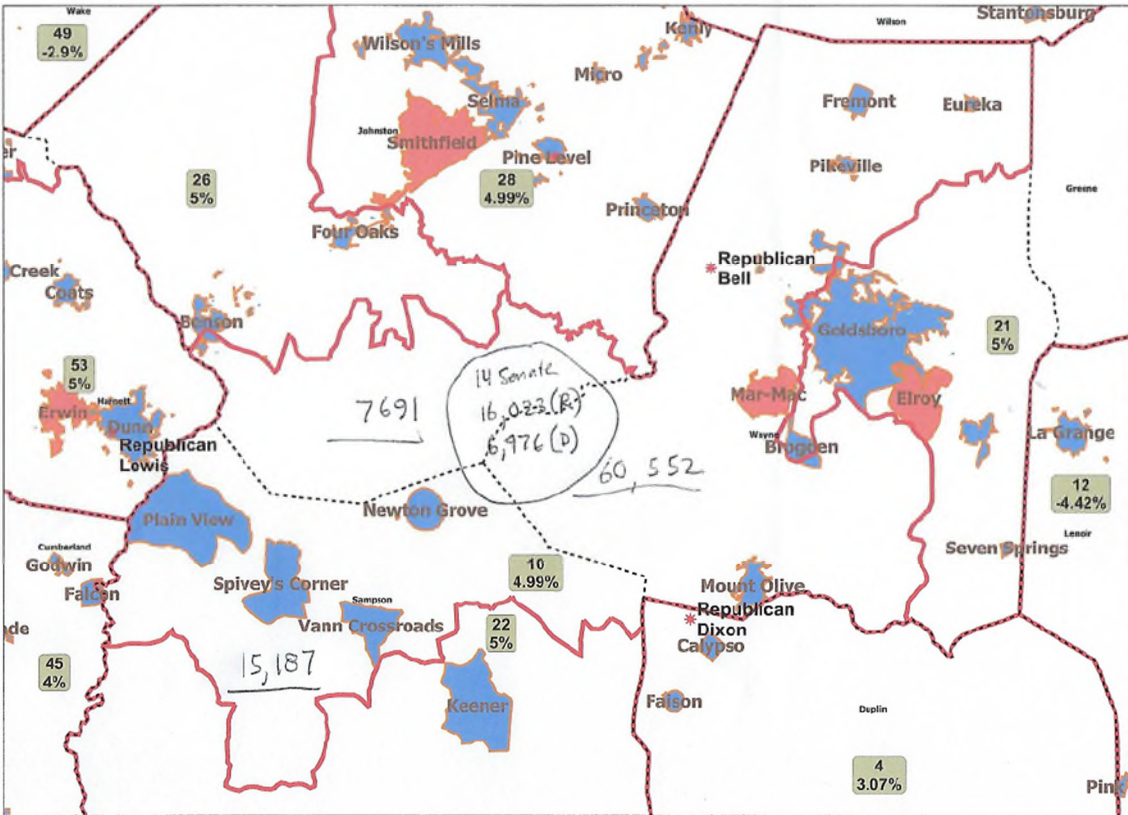


The maps below are from a set of files with names all beginning “NC Senate 2017-E,” and metadata shows that these files were all last modified on September 18, 2016. The maps appear to show drafts of Senate districts in specific portions of the State, and some of these draft districts closely resemble the versions of those districts eventually enacted.





The map below is from a file titled “Johnson-Sampson-Wayne Dist” that was saved into a folder dated June 1, 2017. The map, which zooms-in on an area that includes the proposed new version of Defendant David Lewis’ district, appears to contain handwritten notes with partisanship statistics based on the results of the 2014 U.S. Senate election.



In addition to draft maps, Dr. Hofeller’s files include numerous spreadsheets with partisan scoring of the districts in the draft maps. Below is a sample of these spreadsheets for draft House plans, with the last modified date of the Excel file containing these spreadsheets listed above each image.

November 24, 2016:

A	B	C	D	E	F	G	H
1	New 2016 House Plan						
2							
3	Group Type	Dist	Avg R	Incumbent	Pty	Note	Old Ave R
4	New	1	44.43%	Steinburg	R	##	56.77%
5	Gra-Per-Van-Wa	2	52.41%	Yarborough	R		
6	New	3	54.37%	Speciale	R		
7	New	4	54.77%	Dixon	R		
8	New	5	37.17%	Hunter	D		
9	New	6	57.79%	Boswell	R		
10	Fran-Nash	7	51.17%	Richardson	D	##	38.61%
11	New	8	35.06%	Vacant	D	#	D
12	New	9	53.40%	Murphy	R		
13	New	10	62.11%	Bell	R		
14	Wake	11	40.34%	Hall/Ball	D-D	#	D
15	New	12	48.98%	Graham	D		
16	Old	13	64.27%	McElraft	R		
17	New	14	58.00%	Cleveland	R		
18	New	15	60.58%	Shepard	R		
19	New	16	53.53%	Millis	R		
20	Old	17	60.83%	Iler	R		
21	Old	18	37.12%	Hamilton	D		
22	Old	19	58.04%	Davis	R		
23	Old	20	58.55%	Grange	R		
24	New	21	38.93%	Bell	D		
25	New	22	54.02%	Brison	D	##	52.47%
26	Old	23	34.23%	Willingham	D		
27	New	24	45.20%	Martin/Butterfield	R-D	#	D
28	Fran-Nash	25	47.17%	Collins	R	##	59.22%
29	New	26	62.42%	White	R		
30	Old	27	32.28%	Wray	D		
31	New	28	60.67%	Strickland	R		
32	New	29	11.36%	Hall	D		
33	New	30	37.17%	Lehman	D		
34	New	31	23.18%	Michaux	D		
35	Gra-Per-Van-Wa	32	33.08%	Garrison	D		
36	Wake	33	20.83%	Gill	D		
37	Wake	34	45.21%	Martin	D		
38	Wake	35	55.97%	Malone	R		
39	Wake	36	53.08%	Dollar	R		
40	Wake	37	53.63%	Williams	R		
41	Wake	38	28.48%	Holley	D		
42	Wake	39	32.72%	Jackson	D		
43	Wake	40	57.05%	John	D	##	54.63%
44	Wake	41	45.85%	Adcock	D		
45	Cumb	42	32.49%	Lucas	D		
46	Cumb	43	38.13%	Floyd	D		
47	Cumb	44	31.64%	Richardson	D		
48	Cumb	45	56.32%	Szjoka	R		
49	New	46	48.62%	Jones	R	##	49.42%
50	New	47	29.03%	Graham	D		
51	New	48	39.30%	Pierce	D		
52	Wake	49	56.53%	Vacant	R	#	R
53	New	50	43.29%	Meyer	D		
54	New	51	53.03%	Sauls/Reives	R-D	#	56.92%
55	Old	52	61.97%	Boles	R		
56	New	53	57.67%	Lewis	R		
57	New	54	42.46%	Vacant	D	#	D
58	Old	55	58.80%	Brody	R		
59	New	56	21.06%	Insko	D		
60	Guil	57	24.77%	Harrison	D		
61	Guil	58	28.91%	Quick	D		
62	Guil	59	31.71%	Vacant	D	#	D

December 3, 2016:

A	B	C	D	E	F	G	H	I	J
1	New 2016 House Plan - December 2								
2									
3	Group Type	Dist	Avg R	Off Year	Incumbent	Pty	Note	Old Avg.	New - Old Avg
4	New	1	44.43%	50.90%	Steinburg	R	##	56.77%	-12.28%
5	Gra-Per-Van-Wa	2	52.41%	55.17%	Yarborough	R		51.84%	0.57%
6	New	3	54.37%	61.02%	Speciale	R		56.36%	-1.99%
7	New	4	54.77%	59.69%	Dixon	R		61.60%	-6.83%
8	New	5	37.17%	42.20%	Hunter	D			
9	New	6	57.79%	62.46%	Boswell	R		54.96%	2.83%
10	Fran-Nash	7	51.17%	56.15%	Richardson	D	##	38.61%	12.56%
11	New	8	35.06%	37.15%	Vacant	D	#		
12	New	9	53.40%	57.78%	Murphy	R		53.89%	-0.49%
13	New	10	62.11%	66.57%	Bell	R		62.82%	-0.71%
14	Wake	11	40.34%	39.63%	Hall/Ball	D	#		
15	New	12	48.98%	53.19%	Graham	D		40.79%	8.19%
16	Old	13	64.27%	68.75%	McElraft	R		64.27%	0.00%
17	Old	14	58.00%	64.41%	Cleveland	R		58.00%	0.00%
18	Old	15	60.31%	67.92%	Shepard	R		60.31%	0.00%
19	New	16	53.53%	58.08%	Millis	R		59.57%	-6.04%
20	Old	17	60.83%	64.70%	Iler	R		60.83%	0.00%
21	Old	18	37.12%	39.63%	Hamilton	D			
22	Old	19	58.04%	60.71%	Davis	R		58.04%	0.00%
23	Old	20	58.55%	61.15%	Grange	R		58.55%	0.00%
24	New	21	38.93%	42.84%	Bell	D			
25	New	22	54.02%	57.09%	Brison	D	##	52.47%	1.55%
26	Old	23	34.23%	37.64%	Willingham	D			
27	New	24	45.20%	47.27%	Martini/Butterfield	R-D	#	53.20%	-8.00%
28	Fran-Nash	25	47.17%	48.30%	Collins	R	##	59.22%	-12.05%
29	New	26	62.42%	65.30%	White	R		58.67%	3.75%
30	Old	27	32.28%	36.27%	Wray	D			
31	New	28	60.67%	64.85%	Strickland	R		52.47%	8.20%
32	New	29	11.36%	14.99%	Hall	D			
33	New	30	37.17%	34.44%	Lehman	D			
34	New	31	23.18%	21.17%	Michaux	D			
35	Gra-Per-Van-Wa	32	33.08%	36.55%	Garrison	D			
36	Wake	33	20.83%	17.84%	Gill	D			
37	Wake	34	45.21%	46.34%	Martin	D		37.99%	7.22%
38	Wake	35	55.97%	58.19%	Malone	R		54.92%	1.05%
39	Wake	36	53.08%	53.44%	Dollar	R		54.94%	-1.86%
40	Wake	37	53.63%	55.11%	Williams	R		56.45%	-2.82%
41	Wake	38	28.48%	28.51%	Holley	D			
42	Wake	39	32.72%	32.10%	Jackson	D			
43	Wake	40	57.05%	58.19%	John	D	##	54.63%	2.42%
44	Wake	41	45.85%	45.97%	Adcock	D		50.53%	-4.68%
45	Cumb	42	32.49%	34.61%	Lucas	D			
46	Cumb	43	38.13%	43.01%	Floyd	D			
47	Cumb	44	31.64%	33.67%	Richardson	D			
48	Cumb	45	56.32%	59.43%	Szjoka	R		54.06%	2.26%
49	New	46	48.62%	55.40%	Jones	R	##	49.42%	-0.80%
50	New	47	29.03%	36.41%	Graham	D			
51	New	48	39.30%	42.42%	Pierce	D			
52	Wake	49	56.53%	59.01%	Vacant	R	#		
53	New	50	43.23%	44.13%	Meyer	D		43.14%	0.15%
54	New	51	53.03%	55.85%	Sauls/Reives	R-D	#	56.92%	-3.89%
55	Old	52	61.97%	65.39%	Boles	R		61.97%	0.00%
56	New	53	57.67%	60.25%	Lewis	R		56.55%	1.12%
57	New	54	42.46%	42.28%	Vacant	D	#		
58	Old	55	58.80%	61.57%	Brody	R		58.80%	0.00%
59	New	56	21.06%	17.65%	Insko	D			
60	Guil	57	24.77%	26.37%	Harrison	D			
61	Guil	58	28.91%	31.61%	Quick	D			

June 14, 2017:

	A	B	C	D	E	F	G	H	I	J	K
1	New 2016 House Plan - June 17-2										
2	Using 08 and 12 President Plus Other Statewide Races										
4	Group Type	Dist	Avg R	Off Year	Incumbent	Pty	Note	Old Avg.	New - Old Avg		
5	New	1	44.43%	49.27%	Steinburg	R	##	56.77%	-12.28%		
6	Gra-Per-Van-Wa	2	52.41%	54.23%	Yarborough	R		51.84%	0.57%		
7	New	3	60.04%	63.52%	Speciale	R		56.36%	3.68%		
8	New	4	55.22%	60.42%	Dixon	R		61.60%	-6.38%		
9	New	5	37.17%	40.94%	Hunter	D		32.23%			
10	New	6	57.79%	60.48%	Boswell	R		54.96%	2.83%		
11	Fran-Nash	7	43.21%	44.65%	Richardson	D		38.61%	4.60%		
12	New	8	34.82%	35.83%	Vacant	D	#	53.20%			
13	New	9	54.66%	57.45%	Murphy	R		53.89%	0.77%		
14	New	10	55.52%	59.45%	Vacant	R		62.82%	-7.30%		
15	Wake	11	40.34%	35.32%	Hall/Ball	D-D	#	39.02%			
16	New	12	47.66%	49.85%	Graham	D		40.79%	6.88%		
17	Old	13	64.27%	66.75%	McElraft	R		64.27%	0.00%		
18	Old	14	58.00%	63.85%	Cleveland	R		58.00%	0.00%		
19	Old	15	60.31%	66.50%	Shepard	R		60.31%	0.00%		
20	New	16	53.01%	55.35%	Millis	R		59.57%	-6.56%		
21	Old	17	60.83%	61.63%	Iler	R		60.83%	0.00%		
22	Old	18	37.12%	35.75%	Hamilton	D		37.12%			
23	Old	19	58.04%	55.14%	Davis	R		58.04%	0.00%		
24	Old	20	58.55%	56.63%	Grange	R		58.55%	0.00%		
25	New	21	54.71%	57.18%	Bell	D	##	34.18%	20.52%		
26	New	22	45.15%	47.83%	Brison/Bell	D-D		52.47%	-7.32%		
27	Old	23	34.23%	35.95%	Willingham	D		34.23%			
28	New	24	45.20%	46.85%	Martini/Butterfield	R-D	#	27.25%	17.95%		
29	Fran-Nash	25	54.99%	57.48%	Collins	R	##	59.22%	-4.23%		
30	New	26	62.42%	63.41%	White	R		58.67%	3.75%		
31	Old	27	32.28%	35.04%	Wray	D		32.28%			
32	New	28	60.67%	63.28%	Strickland	R		64.55%	-3.88%		
33	New	29	21.23%	17.64%	Hall	D		14.84%			
34	New	30	31.91%	29.02%	Lehman	D		30.09%			
35	New	31	19.37%	17.54%	Michaux	D		18.28%			
36	Gra-Per-Van-Wa	32	33.08%	34.86%	Garrison	D		33.37%			
37	Wake	33	20.83%	16.85%	Gill	D		19.72%			
38	Wake	34	45.21%	42.30%	Martin	D		37.99%	7.23%		
39	Wake	35	56.07%	55.57%	Malone	R		54.94%	1.13%		
40	Wake	36	53.02%	49.02%	Dollar	R		54.92%	-1.90%		
41	Wake	37	53.64%	51.33%	Williams	R		56.45%	-2.81%		
42	Wake	38	28.48%	26.13%	Holley	D		23.36%			
43	Wake	39	32.87%	30.60%	Jackson	D		44.88%			
44	Wake	40	57.09%	53.97%	John	D	##	54.63%	2.46%		
45	Wake	41	45.86%	41.15%	Adcock	D		50.53%	-4.68%		
46	Cumb	42	27.35%	26.64%	Lucas	D		27.32%			
47	Cumb	43	27.08%	26.63%	Floyd	D		32.39%			
48	Cumb	44	51.20%	53.29%	Richardson	D		47.35%			
49	Cumb	45	51.78%	54.99%	Szjoka	R		54.06%	-2.28%		
50	New	46	49.13%	55.27%	Jones	R		49.42%	-0.29%		
51	New	47	29.06%	36.35%	Graham	D		36.87%			
52	New	48	39.30%	41.31%	Pierce	D		30.57%			
53	Wake	49	56.78%	56.79%	Vacant	R	#	52.25%			
54	New	50	42.46%	41.17%	Meyer	D		43.14%	-0.68%		
55	New	51	53.03%	54.07%	Sauls/Reives	R-D	#	56.92%	-3.89%		
56	Old	52	61.97%	63.60%	Boles	R		61.97%	0.00%		
57	New	53	57.67%	59.82%	Lewis	R		56.55%	1.12%		
58	New	54	42.46%	40.05%	Vacant	D	#	45.69%			
59	Old	55	58.80%	60.72%	Brody	R		58.80%	0.00%		
60	New	56	21.32%	15.19%	Insko	D		23.43%			
61	Guil	57	23.36%	21.80%	Harrison	D		27.28%			
62	Guil	58	11.05%	12.81%	Quirk	D		22.04%			

Below are a sample of similar spreadsheets analyzing draft Senate plans, with the last modified date of the Excel file containing these spreadsheets again listed above each image.

November 26, 2016:

	A	B	C	D	E	F	G	H
1			New 2016 Senate Plan					
2								
3		Group Type	Dist	Avg R	Incumbent	Pty	Note	Old Ave R
4		New	1	52.70%	Cook	R		
5		Old	2	60.16%	Sanderson	R		
6		New	3	35.11%	Smith-Ingram	D		
7		New	4	37.33%	Horner	R	##	
8		New	5	45.94%	Davis	D		
9		Old	6	59.16%	Brown	R		
10		New	7	50.94%	Pate	R		
11		Old	8	54.63%	Rabon	R		
12		Old	9	53.05%	Lee	R		
13		New	10	55.32%	Jackson	R		
14		New	11	54.35%	Bryant	D	##	
15		New	12	56.83%	Rabin	R		
16		Old	13	41.03%	Britt	R	##	
17		Wake-Franklin	14	24.66%	Blue	D		
18		Wake-Franklin	15	52.46%	Alexander	R		
19		Wake-Franklin	16	40.50%	Chaudhuri	D		
20		Wake-Franklin	17	54.36%	Barringer	R		
21		Wake-Franklin	18	52.70%	Barefoot	R		
22		Cumberland	19	50.64%	Meredith	R		
23		New	20	27.50%	McKissick	D		
24		Cumberland	21	29.64%	Clark	D		
25		New	22	33.33%	Woodard	D		
26		Old	23	34.84%	Foushee	D		
27		New	24	58.91%	Gunn	R		
28		New	25	51.51%	McInnis	R		
29		New	26	59.18%	Berger	R		
30		New	27	58.05%	Wade	R		
31		New	28	23.67%	Robinson	D		
32		New	29	60.90%	Tillman	R		
33		New	30	60.87%	Randleman, Ballar	R,R	#	
34		New	31	64.87%	Brock, Krawiec	R,R	#	
35		New	32	30.42%	Lowe	D		
36		Old	33	65.33%	Dunn	R		
37		New	34	66.23%	Vacant	R	#	
38		Old	35	65.63%	Tucker	R		
39		Old	36	61.81%	Newton	R		
40		Mecklenburg	37	32.84%	Vacant	D	#	
41		Mecklenburg	38	26.55%	Jackson	D		
42		Mecklenburg	39	63.97%	Bishop	R		
43		Mecklenburg	40	28.50%	Waddell	D		
44		Mecklenburg	41	49.66%	Ford, Tarte	D,R	###	
45		Old	42	65.81%	Wells	R		
46		New	43	62.82%	Jarromgtpm	R		
47		New	44	62.81%	Curtis	R		
48		New	45	64.46%	Vacant	R	#	
49		New	46	63.85%	Daniel	R		
50		Old	47	59.28%	Hise	R		
51		Old	48	58.81%	Edwards	R		
52		Old	49	40.90%	Van Duyn	D		
53		Old	50	56.29%	Davis	R		
54								
55		Notes: # = Double Bunk or Vacant, ## = Partisan Mismatch						
56		23 Under 53%						

June 13, 2017:

	A	B	C	D	E	F	G	H	I	J
1	New 2016 Senate Plan									
2										
3										
4		Group Type	Dist	Avg R	14 Sen%	Incumbent	Pty	Note	Old Ave R	11 to 17
5		New	1	47.94%	52.31%	Cook	R		53.54%	-5.60%
6		Old	2	60.16%	63.13%	Sanderson	R		60.16%	0.00%
7		New	3	40.10%	43.10%	Smith-Ingram	D		34.18%	5.93%
8		New	4	37.33%	39.24%	Horner	R	##	31.88%	5.51%
9		New	5	45.94%	48.68%	Davis	D		36.80%	9.15%
10		Old	6	59.16%	64.63%	Brown	R		59.16%	0.00%
11		New	7	50.94%	53.60%	Pate	R		59.37%	-8.43%
12		Old	8	54.63%	56.14%	Rabon	R		54.63%	0.00%
13		Old	9	53.05%	51.05%	Lee	R		53.05%	0.00%
14		New	10	54.75%	57.91%	Jackson	R		57.13%	-2.38%
15		New	11	54.47%	56.42%	Bryant	D	##	57.61%	-3.13%
16		New	12	57.19%	58.83%	Rabin	R		57.19%	0.00%
17		Old	13	41.09%	47.12%	Britt	R	##	41.09%	0.00%
18		Wake-Franklin	14	25.37%	22.89%	Blue	D		25.54%	-0.17%
19		Wake-Franklin	15	53.04%	49.97%	Alexander	R		53.32%	-0.28%
20		Wake-Franklin	16	39.77%	35.22%	Chaudhuri	D		38.80%	0.97%
21		Wake-Franklin	17	54.36%	51.52%	Barringer	R		53.45%	0.91%
22		Wake-Franklin	18	52.57%	53.26%	Barefoot	R		52.76%	-0.19%
23		Cumberland	19	50.79%	53.27%	Meredith	R		49.30%	1.48%
24		New	20	20.93%	18.06%	McKissick	D		24.15%	-3.23%
25		Cumberland	21	29.52%	29.98%	Clark	D		30.53%	-1.01%
26		New	22	40.57%	39.77%	Woodard	D		37.71%	2.86%
27		Old	23	34.84%	31.50%	Foushee	D		34.84%	0.00%
28		New	24	56.91%	58.10%	Gunn	R		59.06%	-2.14%
29		New	25	51.51%	54.18%	McInnis	R		55.19%	-3.68%
30		New	26	59.18%	62.59%	Berger	R		57.51%	1.67%
31		New	27	57.95%	56.89%	Wade	R		55.06%	2.90%
32		New	28	22.97%	22.18%	Robinson	D		18.65%	4.32%
33		New	29	60.90%	64.77%	Tillman	R		67.04%	-6.14%
34		New	30	60.87%	63.71%	Randleman, Ballard	R,R	#	66.15%	-5.28%
35		New	31	64.87%	65.07%	Brock, Krawiec	R,R	#	62.71%	2.16%
36		New	32	30.42%	29.53%	Lowe	D		31.20%	-0.78%
37		Old	33	65.39%	68.87%	Dunn	R		65.39%	0.00%
38		New	34	66.29%	67.96%	Vacant	R	#	63.53%	2.76%
39		Old	35	65.83%	65.84%	Tucker	R		65.36%	0.27%
40		Old	36	61.81%	60.28%	Newton	R		62.18%	-0.38%
41		Mecklenburg	37	31.35%	29.21%	Vacant	D	#	37.87%	-6.52%
42		Mecklenburg	38	28.06%	23.76%	Jackson	D		23.36%	4.70%
43		Mecklenburg	39	63.96%	59.63%	Bishop	R		61.93%	2.03%
44		Mecklenburg	40	29.05%	25.80%	Waddell	D		20.96%	8.09%
45		Mecklenburg	41	49.59%	45.44%	Ford, Tate	D,R	###	57.53%	-7.94%
46		Old	42	65.81%	67.05%	Wells	R		65.81%	0.00%
47		New	43	62.82%	63.14%	Jarrongtgm	R		62.82%	0.00%
48		New	44	62.81%	64.31%	Curtis	R		65.66%	-2.85%
49		New	45	64.46%	65.33%	Vacant	R	#	61.05%	3.41%
50		New	46	63.85%	65.80%	Danniel	R		58.59%	5.26%
51		Old	47	59.28%	61.81%	Hise	R		59.28%	0.00%
52		Old	48	58.81%	58.70%	Edwards	R		58.81%	0.00%
53		Old	49	40.90%	38.15%	Van Duyn	D		40.90%	0.00%
54		Old	50	56.29%	58.76%	Davis	R		56.29%	0.00%
55	Pressure Points for GOP Incumbents:									
56	1. Sen. Cook in District 1(Northeast Coast) is now in a toss-up district									
57	2. Senators Randleman & Ballard are double-bunked in a strong GOP District 30 (Northwest of Stat									
58	3. Senators Brock & Krawiec are double-bunked in a strong GOP District 31(Davie & Forsyth)									
59	4. Senators Tate (R) & Ford (D) are double-bunked in a leaning-Dem. District 41(N. Mecklenburg).									
60	5. There are 2 strong GOP and 1 Strong Dem vacant districts (34, 37 and 45).									
61	6. 34% (12) of Republican Incumbents do not have to run in a Special Election.									
62	7. 12% (2) Democrats do not have to run in a Special Election.									

The existence of these draft maps and spreadsheets with partisan scoring of potential new districts is irreconcilable with Legislative Defendants' representations to the Court that "no legislative redistricting was occurring prior to July 2017," and that "July 1, 2017 to August 31, 2017 represented the period of time that the legislature was actually engaged in and preparing for legislative redistricting." Legislative Defs. Br. at 4, 5. And these files are flatly irreconcilable with Legislative Defendants' interrogatory answer that "no drafts of the 2017 Plans existed prior to August 10, 2017." Ex. A at 10 (Interrogatory No. 6). In addition to any other relief or inquiry the Court deems appropriate, the existence of these files, at a minimum, weighs decisively in favor of granting Plaintiffs' request that Legislative Defendants must extend their discovery search back to August 2016.²

II. Legislative Defendants Must Search an Appropriate Time Period Using Appropriate Search Terms

Even setting aside the above files, Legislative Defendants should be ordered to expand their search for documents responsive to Plaintiffs' document requests to be from August 11, 2016 to November 13, 2018, and they should further be ordered to use appropriate search terms. Legislative Defendants offer no legitimate justification for limiting their search to just a two-month period, particularly when they themselves requested documents from Plaintiffs spanning back many years, and Plaintiffs produced such documents in response.

Legislative Defendants' belated proposal to expand their search period using the single search term of "Hofeller" is woefully deficient. It is apparent that Legislative Defendants have

² These files call into question other interrogatory responses by Legislative Defendants as well. In response to an Interrogatory asking Legislative Defendants to "[i]dentify and describe all computers . . . used in developing the 2017 Plans," Legislative Defendants answered that "[t]o the knowledge of the defendants, the 2017 plans were drawn on a computer owned by the General Assembly." Ex. A at 13 (Interrogatory No. 9). None of the files reproduced in this brief were on the General Assembly hard drive that Legislative Defendants turned over and claimed was the computer used to draw the plans. Legislative Defendants also asserted in response to a different Interrogatory that, "[t]o the best of their knowledge, information, and belief, legislative defendants did not communicate with any 'entity' prior to August 10, 2017 regarding the drawing, revising, or criteria for the 2017 plans." *Id.* at 9 (Interrogatory No. 5).

already run the search over the expanded time period using all of the terms in their original search, collected and reviewed the documents, and now are attempting to go back and re-run their search with only a single term, after knowing what the other terms produce. That is not how discovery works. If Legislative Defendants' recent search using appropriate search terms over an appropriate time period returned some records that are not responsive, then they should withhold those documents and produce all the ones that are responsive, as litigants routinely do in any civil litigation, and as Plaintiffs did in this case. Moreover, Legislative Defendants' examples of false positives notably do not mention any false positives that they found using terms from their original set such as "redistrict," "redistricting," or "VTDs," and yet they still propose to exclude these terms from their search of the expanded time period.

III. There Is No Justification for Legislative Defendants' Belated Curing of Their Privilege Log

Yesterday, April 25, Legislative Defendants finally sent Plaintiffs a privilege log that lists the specific privilege being invoked to withhold each document. There is no justification for Legislative Defendants' delay in providing a sufficient privilege log; this Court ordered Legislative Defendants to provide a compliant log by April 3, more than three weeks ago.

Respectfully submitted this the 26th day of April, 2019

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CERTIFICATE OF SERVICE

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

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This the 26th day of April, 2019.

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EXHIBIT A

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

COMMON CAUSE; *et al.*)
)
 Plaintiffs,)
)
 v.)
)
 DAVID R. LEWIS, *et al.*)
)
 Defendants.)
)
)
)
 _____)

**LEGISLATIVE DEFENDANTS SECOND SUPPLEMENTAL OBJECTIONS AND
RESPONSES TO PLAINTIFFS FIRST SET OF INTERROGATORIES**

Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy K. Moore, and President Pro Tempore of the North Carolina Senate, Philip E. Berger (Defendants or legislative defendants), by and through undersigned counsel, serve their supplemental objections and responses to Plaintiffs' First Set of Interrogatories as follows:

GENERAL OBJECTIONS

Defendants make the following second set of supplemental answers, responses, and objections to Plaintiffs' First Set of Interrogatories ("Interrogatories"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from: (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such, and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Interrogatories. These responses are subject to amendment and supplementation as Defendants acquire additional information and complete their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Interrogatories were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Interrogatory should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Interrogatory or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Interrogatory is not intended to be, and shall not be, construed as a waiver by Defendants of any part of any objection to any Interrogatory. Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 33 of the North Carolina Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

INTERROGATORIES

1. Identify each person who, to your knowledge, had any involvement in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, information protected by legislative privilege, and information that constitutes work product. Defendants also object to this interrogatory in that involvement is vague.

Without waiving these objections, the 2017 plans were drawn by Dr. Thomas Hofeller, under the direction of Representative David Lewis and Senator Ralph Hise. Representative Lewis and Senator Hise were responsible for developing and proposing the criteria adopted by the Redistricting Committees that were used by Dr. Hofeller to draw the 2017 plans. Representative Nelson Dollar had input revising the 2017 House Plan, and Senators Bishop, Meredith, Wade, and Alexander were consulted on some revisions to the 2017 Senate Plan. In addition, all members of the General Assembly had opportunities to

revise the plans through amendments during the legislative process and members of the public had access to publicly available computer terminals to draft plans. Moreover, the General Assembly authorized the minority caucus to retain consultants to assist with mapdrawing and Defendants believe that one or more consultants was so retained, including Kareem Crayton.

In addition, see Defendants responses to Plaintiffs Third Set of Interrogatories.

April 3, 2018 Supplemental Response: In addition, the State Senate and State House redistricting committee members were involved in the redistricting, including specifically the Republican members of each committee. The Republican members of the State Senate committee were: Sen. Ralph Hise, Chairman, Sen. Dan Bishop, Sen. Harry Brown, Sen. Warren Daniel, Sen. Kathy Harrington, Sen. Brent Jackson, Sen. Michael V. Lee, Sen. Paul Newton, Sen. Bill Rabon, and Sen. Trudy Wade.

The Republican members of the State House committee were: Rep. David Lewis, Senior Chairman, Rep. Nelson Dollar, Chairman, Rep. John Bell, Vice Chairman, Rep. Sarah Stevens, Vice Chairman, Rep. John Szoka, Vice Chairman, Rep. Jon Torbett, Vice Chairman, Rep. Bill Brawley, Rep. Justin Burr, Rep. Ted Davis, Rep. Jimmy Dixon, Rep. Josh Dobson, Rep. Andy Dulin, Rep. Holly Grange, Rep. Destin Hall, Rep. Jon Hardister, Rep. Kelly Hastings, Rep. Julia Howard, Rep. Pat Hurley, Rep. Linda Johnson, Rep. Bert Jones, Rep. Jonathan Jordan, Rep. Chris Malone, Rep. David Rogers, Rep. Jason Saine, and Rep. Michael Speciale.

The Republican members of the State House and State Senate redistricting committees have knowledge of the redistricting process, criteria, and districts drawn and enacted in 2017.

Non-lawyer legislative staff involved in the redistricting to the best of legislative defendants knowledge would have been Jim Blaine and Mark Coggins, each of whom would have assisted with information and drafting requests by legislators, including the legislative defendants, as well as planning and logistics of the legislative process that led to the enactment of the plans.

Legal legislative staff for the legislative defendants involved in the redistricting to the best of legislative defendants knowledge would have been Andrew Tripp, Julie Bradburn, Brent Woodcox, Bart Goodson, and Neal Inman, each of whom would have assisted in providing legal advice regarding the 2017 plans and the legislative process that led to the enactment of the plans.

2. For each person identified in response to Interrogatory 1, describe that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: See response to Interrogatory No. 1 and to Plaintiffs Third Set of Interrogatories.

3. For each person identified in response to Interrogatories 1 and 2, provide the name of any entity with which each such person was affiliated at the time of that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Defendants object to Interrogatory 3 on the grounds that entity with which each such person was affiliated is both unduly vague and overbroad since the persons in question may have been affiliated with various entities that had nothing to do with redistricting.

In addition, see Defendants responses to Plaintiffs Third Set of Interrogatories.

April 3, 2018 Supplemental Response: Each person identified by legislative defendants is a legislator or otherwise employed by and affiliated with the North Carolina General Assembly.

4. For each person identified in response to Interrogatories 1 and 2, provide the name of the entity or entities that paid that person's fees or expenses for his or her work in drawing or revising district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Representatives Lewis and Dollar and Senator Hise were not paid any fees for their involvement with the 2017 plans. Dr. Hofeller's fees were paid by the North Carolina General Assembly as he worked as a consultant to Representative Lewis and Senator Hise. Defendants also believe that the fees of the consultant retained by the minority caucus, Kareem Crayton, were paid by the General Assembly.

April 3, 2018 Supplemental Response: None of the individuals identified by legislative defendants were paid except by the General Assembly.

5. Identify each person or entity with whom you communicated before August 10, 2017 regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Representative Lewis and Senator Hise consulted with legal counsel (specifically counsel of record in the *Covington* matter) during the 2017 redistricting process. Both of them also likely consulted with members of the General Assembly and the public.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.

April 3, 2018 Supplemental Response: Legal counsel of record from the Covington matter with whom legislative defendants consulted during the 2017 redistricting process were Tom Farr and Phil Strach. To the best of their knowledge, information, and belief, legislative defendants did not communicate with any entity prior to August 10, 2017 regarding the drawing, revising, or criteria for the 2017 plans. To the best of their knowledge, information, and belief, the persons with whom legislative defendants communicated regarding the 2017 plans were disclosed in the response to Interrogatory No. 1.

6. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans before August 10, 2017.

RESPONSE: To the best recollection of Defendants, no drafts of the 2017 plans existed prior to August 10, 2017. At LDNC000286, Senator Erica Smith-Ingram clarifies that no new maps had been drawn prior to August 10, 2017.

7. Identify each person or entity with whom you communicated, between August 10, 2017 and August 21, 2017, regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans.

RESPONSE: See objections and response to Interrogatory No. 5.

In addition, legislative defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.

In addition to the individuals identified herein in response to Interrogatory 1, the legislative defendants discussed this matter by email correspondence with numerous constituents, which email correspondence has been provided to Plaintiffs. All other email or other communications have been provided to Plaintiffs in response to the Requests for Production of Documents. Legislative defendants are aware of no other communications responsive to Interrogatory No. 7.

8. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10, 2017 and August 21, 2017.

RESPONSE: To the best recollection of the defendants, it is likely that Representative Lewis, Representative Dollar, Senator Hise, Jim Blaine, and Mark Coggins viewed all or part of the 2017 plans between August 10, 2017 and August 21, 2017. In addition, the draft 2017 plans were released publicly on August 19, 2017 and accordingly available to every member of the public.

Also, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.

Counsel of record for legislative defendants in *Covington* also likely viewed draft maps for purposes of providing legal advice.

9. Identify and describe all computers, software, programs, applications, and statistical packages used in developing the 2017 Plans. For each, identify and describe the owner of the computer, software, program, application, or statistic package and who paid for it.

RESPONSE: To the knowledge of the defendants, the 2017 plans were drawn on a computer owned by the General Assembly. Dr. Hofeller used the Maptitude software program to draw the plans. A license for this program was also purchased by the General Assembly. All information on any computer used to draw the 2017 plans by Dr. Hofeller that is in the possession, custody, or control of the General Assembly has been provided to Plaintiffs.

10. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: The criteria used to draw the 2017 plans is the criteria adopted by the Redistricting Committees, is a matter of public record, and has already been provided to Plaintiffs counsel and can be found at LDNC000302.

11. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the 2017 Plans, including but not limited to the 2017 Plans Criteria, were prioritized or weighted in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: All constitutionally required criteria had priority over all other criteria including equal population between districts, the *Stephenson* county grouping formula, and the requirement of contiguity. Other factors were considered only when the consideration of such criteria did not conflict with constitutional criteria and could be harmonized with the other criteria. Use of election data was not the predominant criterion used to draft the 2017 plans.

12. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

RESPONSE: Defendants object to this interrogatory on the grounds that formulas or algorithms are vague. Defendants are not aware of any formulas or algorithms used to draw the plans. After the plans were developed, reports were prepared showing election results in each district for certain statewide elections. These reports are part of the public record and have already been produced to Plaintiffs counsel.

In addition, Dr. Hofeller may have used election results in addition to the other criteria in drawing the Plans. To the best of Defendants memory, the Maptitude software used by Dr. Hofeller contained the ability to calculate the average percentage vote of ten statewide elections for districts.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of any formulas or algorithms other than what has been previously disclosed in their responses to this Interrogatory. The record at LDNC000138 indicates that Maptitude had the ability to apply 9 different tests to determine compactness. Those tests included: the Reock test, the Schwartzberg test, the Perimeter test, the Polsby-Popper test, the Length-Width test, the Population Polygon test, the Minimum Convex Polygon test, the Population Circle test and the Ehrenburg test. Maptitude may have included other tests, formulas, or algorithms, but legislative defendants do not recall. In addition, legislative defendants affirm and adopt the following testimony by witnesses in the Dickson and Covington cases:

DEPOSITION OF SENATOR ROBERT RUCHO (DICKSON V. RUCHO

5/4/12):

26:7-31:2

33:4-11

37:7-14

41:7-42:13

43:15-46:4

48:19-54:18

54:19-55:16

55:22-68:16

68:21-71:14

71:15-72:14

92:25-109:10

116:21-117:20

121:7-126:3

137:13-143:25

145:18-148:8

158:13-159:12

170:8-174:8

190:13-194:3

DEPOSITION OF REPRESENTATIVE DAVID LEWIS (DICKSON V. RUCHO

5/3/12)

28:22-30:9

39:17-43:04; 44:8-50:15

62:8-23

71:16-72:11; 73:2-76:13

78:1-81:21

82:22-83:8

87:15-23

90:18-24

92:8-15; 98:19-99:3

103:5-104:4

105:15-22

107:18-24

108:3-23; 110:16-115:10; 116:5-22; 125:7-133:21; 139:20-146:20

152:15-153:2

153:11-164:12; 165:9-165:10

194:1-9

195:14-201:3; 209:14-19

215:25-216:16

DEPOSITIONS OF DR. THOMAS HOFELLER TAKEN ON 6-28-12 and 8-10-12

(Dickson)

Vol I

41:21-45:12

47:14-53:09

55:01-58:25

Vol. II

196:21-219:19

266:22-269:01

272:03-273:03

273:04-351:04

357:16-360:15

361:24-363:16

364:06-364:24

365:04-366:12

DEPOSITION OF SENATOR ROBERT RUCHO (COVINGTON V. NORTH CAROLINA 2/8/16)

8:23-10:13

11:13-17:10

18:1-19:20

20:17-22:15

DEPOSITION OF DAVID LEWIS (COVINGTON V. NORTH CAROLINA 2/5/16)

9:5-21

10:25-11:9

29:20-30:22

31:23-32:18

33:4-22

36:13-21

43:2-8

44:6-10

46:24-47:16

48:19-50:2

DEPOSITION OF DR. THOMAS HOFELLER (COVINGTON V. NORTH CAROLINA 2/16/16)

11:5-15:18

16:13-18:11

22:21-23:15

25:15-26:20

34:7-38:14

41:24-45:25

56:19-57:11

63:17-65:16; 65:19-67:23

68:1-72:23

73:2-10

13. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2017 Plans.

RESPONSE: Defendants object to this interrogatory on the grounds that partisanship scores or estimates are vague. Without waiving this objection, see response to Interrogatory Nos. 10, 11, and 12.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of any formulas or algorithms other than what has been previously disclosed in their responses to this Interrogatory. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases referenced in the response to Interrogatory No. 12.

14. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

RESPONSE: In 2017, the legislature did not change districts in 2011 county groups that did not have to be changed because of the impact of a district declared illegal in the *Covington* case.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of the criteria other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases set forth in the response to Interrogatory No. 12.

15. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the for the 2011 Unchanged Districts were prioritized or weighted in drawing or revising district boundaries for the 2011 Unchanged Districts.

RESPONSE: See response to Interrogatory No. 14.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of the prioritization of the criteria other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases as set forth in the response to Interrogatory No. 12.

16. Identify and describe all elections data and other measures of partisanship that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

RESPONSE: See response to Interrogatory No. 14.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of elections data and other measures of partisanship other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases as set forth in the response to Interrogatory No. 12.

17. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2011 Unchanged Districts, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

RESPONSE: See response to Interrogatory No. 16.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of elections data and other measures of partisanship other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases as set forth in the response to Interrogatory No. 12.

18. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

RESPONSE: Defendants object to this interrogatory on the grounds that partisanship scores or estimates are vague. Without waiving this objection, see response to Interrogatory No. 16.

April 3, 2018 Supplemental Response: Legislative defendants do not have any independent recollection of partisanship scores or estimates for precincts or voting districts other than what has been previously disclosed in their responses to this Interrogatory and in the litigation record from the Dickson and Covington cases. Nonetheless, legislative defendants affirm and adopt the testimony by witnesses in the Dickson and Covington cases as set forth in the supplemental response to Interrogatory No. 12.

Respectfully submitted this the 3rd day of April, 2019.

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

By: /s/Phillip J. Strach

Phillip J. Strach

N.C. State Bar No. 29456

Michael McKnight

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing document to be served on all counsel of record by electronic mail in accordance with the agreement of the parties to serve documents in this matter electronically.

This the 3rd day of April, 2019.

By: /s/Phillip J. Strach
Phillip J. Strach

36889669.1

EXHIBIT B

Jacobson, Daniel

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

Phil, John, and Paul:

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

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

Let us know how you'd like to proceed.

Stanton

Stanton Jones

Partner

Arnold & Porter

601 Massachusetts Ave., NW

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

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

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

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

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

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

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

Phil:

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

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

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

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

Regards,
Stanton

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

Dan:

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

Phil

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

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

Phil and John,

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

Best,
Dan

Daniel Jacobson
Senior Associate

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From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Thursday, April 11, 2019 6:13 PM
To: Strach, Phillip J. <phil.strach@ogletree.com>; John Branch <JBranch@shanahanlawgroup.com>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Cox, Paul <pcox@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; melias@perkinscoie.com; Hill, Linda <LHill@poynerspruill.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Speas, Edwin M. <ESpeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>
Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Phil and John:

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

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

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

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Thursday, April 11, 2019 5:17 PM
To: Nate Pencook; Cox, Paul; Riggins, Alyssa; Jacobson, Daniel; Mackie, Caroline P.; Stanley, Trevor M.; Myers, Kellie Z.; Steele, Adam H.
Cc: Jones, Stanton; Theodore, Elisabeth; Brennan, Stephanie; McKnight, Michael D.; Majmundar, Amar; Speas, Edwin M.; zzz.External.AKhanna@perkinscoie.com; Braden, E. Mark; Raile, Richard; melias@perkinscoie.com; Hill, Linda; John Branch
Subject: RE: Common Cause v. Lewis, 18 CVS 14001 -- Plaintiffs' Motion for Clarification Pursuant to Rule 45

Ms. Myers and Mr. Steele:

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