

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.

**BRIEF IN SUPPORT OF  
PLAINTIFFS' THIRD  
MOTION TO COMPEL  
(SUBPOENA TO  
NORTH CAROLINA  
REPUBLICAN PARTY)**

Plaintiffs submit this brief in support of their motion to compel the production of documents by the North Carolina Republican Party (“NC GOP”). Plaintiffs filed this motion to compel on April 17, 2019, but informed the Court that no action was needed at that time because the NC GOP had represented that it had begun searching for, and would produce, responsive documents. However, as of this filing more than three weeks later, the NC GOP still has not produced a single document, and still has not provided any written objections or responses at all to the subpoena issued over two months ago. Plaintiffs request that this Court compel the NC GOP to produce all responsive documents within ten days after the Court’s order, and make clear in the Court’s order that the NC GOP has waived any privilege or other objections. Plaintiffs further request that the Court award Plaintiffs their attorneys’ fees and costs in connection with this motion, and that the Court permit Plaintiffs to delay the deposition of the NC GOP until one week after it has completed producing documents.

### **BACKGROUND**

On March 8, 2019, Plaintiffs issued a subpoena to the NC GOP requesting documents regarding the redrawing of the North Carolina House and Senate districts and related communications with Defendants. *See Ex. A.* The subpoena called for the NC GOP to produce the requested materials by April 8, 2019. *Id.*

The NC GOP did not respond at all to the subpoena by the return date of April 8. The NC GOP never contacted Plaintiffs regarding the subpoena or otherwise communicated any objection or other response. Having received no response, on April 10, Plaintiff contacted an attorney who has represented the NC GOP in another pending matter, and that attorney indicated that another attorney, John Lewis, was representing the NC GOP in connection with this case. Plaintiffs contacted Mr. Lewis, who confirmed that the NC GOP had received the subpoena and

had not responded by the return date. Mr. Lewis indicated that the NC GOP at that time was conducting a search for responsive materials.

On April 17, Plaintiffs spoke with Mr. Lewis, who indicated that the NC GOP was continuing to search staff emails and would produce responsive documents in short order. Mr. Lewis further indicated that the NC GOP had located hard drives that likely contained responsive materials, but the hard drives were password-protected, and the NC GOP was hiring a vendor to help access the hard drives. *See* Ex. B (4/29/19 e-mail from Mackie to Lewis). Because April 17 was the deadline for the close of written fact discovery, Plaintiffs filed their motion to compel on April 17 but indicated that no action was needed from the Court at that time given the NC GOP's representation that it would soon begin producing responsive documents.

On April 29, Plaintiffs followed up again with Mr. Lewis, advising that Plaintiffs would ask the Court to take action on the motion to compel unless the NC GOP completed its production of materials by May 3. On May 2, Mr. Lewis responded that the NC GOP had "located several hard drives and computers which [they] believe will contain any information relating to redistricting matter," and which had "been delivered to an IT company to crack the password protection and to begin performing key word searches for relevant documents." Ex. B (5/2/19 e-mail from Lewis to Mackie). Mr. Lewis indicated that the NC GOP was "also performing key word searches on hardware currently located at our headquarters as well," and "[a]s soon as we have the results of our searches we will produce the information." *Id.*

To avoid involving the Court unless absolutely necessary, Plaintiffs decided to wait and see whether the NC GOP would in fact begin producing documents, as Mr. Lewis represented. However, Plaintiffs asked Mr. Lewis to confirm that party staff and leaders were searching their e-mail accounts, and Plaintiffs provided a list of keywords that should be used for relevant

searches. Ex. B (5/2/19 e-mail from Mackie to Lewis). Mr. Lewis responded on May 2, stating that he would verify which e-mail accounts were being searched and would pass along the keywords that Plaintiffs provided. *Id.* (5/2/19 e-mail from Lewis to Mackie).

As of this May 9 filing, Plaintiffs have received no further update from the NC GOP, and the NC GOP has not produced a single document or served any written objections or responses, even though their response to the subpoena was due a month ago, on April 8, 2019.

### **ARGUMENT**

North Carolina Rule of Civil Procedure 37 provides that a party may move to compel discovery responses when the recipient of a discovery request fails to respond. With respect to third-party subpoenas specifically, Rule 45(e)(1) provides that “[f]ailure by any person without adequate excuse to obey a subpoena served upon the person may be deemed a contempt of court,” and that “[f]ailure by any party without adequate cause to obey a subpoena served upon the party shall also subject the party to the sanctions provided in Rule 37(d).”

Here, Plaintiffs served their subpoena seeking documents from the NC GOP on March 8, the NC GOP’s response was due on April 8, and as of May 9, the NC GOP still has failed to produce any documents or to provide any written objections or responses. There is no justification for the NC GOP’s complete failure to comply with its discovery obligations, and an order compelling prompt production of responsive documents is warranted.

Moreover, because the NC GOP did not serve timely written objections and responses to the subpoena, this Court should make clear in its order that the NC GOP has waived any privilege or other objections. It is black-letter law that a party “waive[s] its right to object” to discovery requests on privilege grounds where it does not serve timely objections and responses. *Harrington Mfg. Co. v. Powell Mfg. Co.*, 26 N.C. App. 414, 415, 216 S.E.2d 379, 380 (1975). “[F]ailure to assert a proper objection, with a privilege log if applicable, constitutes a waiver of

said objections.” *Warren v. Sessoms & Rogers, P.A.*, No. 7:09-CV-00159-BO, 2012 WL 13024154, at \*4 (E.D.N.C. Nov. 26, 2012); *see also United States v. \$43,660.00 in U.S. Currency*, No. 1:15CV208, 2016 WL 1629284, at \*5 (M.D.N.C. Apr. 22, 2016) (“Claimant’s failure to timely raise the objection and privilege resulted in their waiver”); *Phillips v. Dallas Carriers Corp.*, 133 F.R.D. 475, 477 (M.D.N.C. 1990) (“It is well settled that the failure to make a timely objection in response to a Rule 34 request results in waiver.”). The NC GOP has waived any right to assert privilege or other objections to the subpoena.

In addition, pursuant to Rule 37(a) and Rule 45(e), this Court should award Plaintiffs their fees and costs in connection with this motion. Rule 37(a)(4) provides that, where a motion to compel is granted, “the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney’s fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.” Thus, an award of fees and expenses is “mandatory” upon granting a motion to compel, *Graham v. Rogers*, 121 N.C. App. 460, 463, 466 S.E.2d 290, 293 (1996), unless the party that resisted discovery can show its opposition was “substantially justified” or awarding fees and expenses otherwise would be unjust. “[T]he burden of proving the non-compliance was justified” rests with the party compelled to produce discovery. *Graham*, 121 N.C. App. at 4635, 466 S.E.2d at 294. “The trial court also retains inherent authority to impose sanctions for discovery abuses beyond those enumerated in Rule 37.” *Cloer v. Smith*, 132 N.C. App. 569, 573, 512 S.E.2d 779, 782 (1999).

The NC GOP cannot meet its burden to show that its failure to comply with the subpoena is justified. Indeed, Plaintiffs made every effort to avoid motions practice on this subpoena, but

the NC GOP's continued failure to produce any documents has necessitated Plaintiffs' filing this motion and supporting brief. An award of fees and costs in light of the NC GOP's conduct is more than warranted.

Finally, Plaintiffs request that the Court order that the deposition of the NC GOP may be taken within one week after the NC GOP completes its production of responsive documents. The NC GOP's deposition is currently scheduled for May 16, one day before the May 17 deadline for the close of fact discovery under the Stipulated Case Management Order. Good cause exists for extending that deadline to allow Plaintiffs to take the NC GOP's deposition sufficiently after all of its documents have been produced.

\* \* \*

WHEREFORE, Plaintiffs request that the Court grant the motion to compel and order the NC GOP to produce documents responsive to Plaintiffs March 8, 2019 subpoena within ten days after the Court's order; make clear in the Court's order that the NC GOP has waived any privilege or other objections to the subpoena; award Plaintiffs their fees and costs in connection with this motion; and permit Plaintiffs to take the deposition of the NC GOP within one week after the NC GOP's production of responsive documents is complete.

Respectfully submitted this the 9th day of May, 2019

**POYNER SPRUILL LLP**

By: /s/Caroline P. Mackie  
Edwin M. Speas, Jr.  
N.C. State Bar No. 4112  
Caroline P. Mackie  
N.C. State Bar No. 41512  
P.O. Box 1801  
Raleigh, NC 27602-1801  
(919) 783-6400  
espeas@poynerspruill.com

*Counsel for Common Cause, the North  
Carolina Democratic Party, and the  
Individual Plaintiffs*

*\*Admitted Pro Hac Vice*

**ARNOLD AND PORTER  
KAYE SCHOLER LLP**

R. Stanton Jones\*  
David P. Gersch\*  
Elisabeth S. Theodore\*  
Daniel F. Jacobson\*  
601 Massachusetts Avenue NW  
Washington, DC 20001-3743  
(202) 954-5000  
stanton.jones@arnoldporter.com

**PERKINS COIE LLP**

Marc E. Elias\*  
Aria C. Branch\*  
700 13th Street NW  
Washington, DC 20005-3960  
(202) 654-6200  
melias@perkinscoie.com

Abha Khanna\*  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
(206) 359-8000  
akhanna@perkinscoie.com

*Counsel for Common Cause and the  
Individual Plaintiffs*

**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  
Paul M. Cox  
NC Department of Justice  
P.O. Box 629  
114 W. Edenton St.  
Raleigh, NC 27602  
amajmundar@ncdoj.gov  
sbrennan@ncdoj.gov  
pcox@ncdoj.gov  
*Counsel for the State Board of Elections and  
Ethics Enforcement and its members*

John E. Branch III  
H. Denton Worrell  
Nathaniel J. Pencook  
Shanahan McDougal, PLLC  
128 E. Hargett Street, Suite 300  
Raleigh, NC 27601  
jbranch@shanahanmcdougal.com  
dworrell@shanahanmcdougal.com  
npencook@shanahanmcdougal.com  
*Counsel for the Defendant-Intervenors*

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  
*Counsel for the Legislative Defendants*

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 9th day of May, 2019.

/s/Caroline P. Mackie  
Caroline P. Mackie



# **EXHIBIT A**

STATE OF NORTH CAROLINA

File No.

18-CVS-014001

WAKE County

In The General Court Of Justice
District Superior Court Division

Common Cause, et al.,

Additional File Numbers

VERSUS

SUBPOENA

David Lewis, in his Official Capacity as Senior Chairman of the House Select Committee on Redistricting, et al.

G.S. 1A-1, Rule 45; 8-59, -61, -63; 15A-801, -802

Party Requesting Subpoena

State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

Name And Address Of Person Subpoenaed

North Carolina Republican Party
1506 Hillsborough St

Alternate Address

Raleigh NC 27605

Telephone No.

(919) 828-6423

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
produce and permit inspection and copying of the following items, at the place, date and time indicated below.
See attached list. (List here if space sufficient)

For a list of documents to produce, see the attachment to this Subpoena.

Name And Location Of Court/Place Of Deposition/Place To Produce

Poyner Spruill LLP
301 Fayetteville St., Suite 1900
Raleigh, NC 27601

Date To Appear/Produce, Until Released

The date to produce requested items is 4/08/2019.

Time To Appear/Produce, Until Released

5:00 PM

AM PM

Date

03/08/2019

Name And Address Of Applicant Or Applicant's Attorney

Edwin M. Speas, Esq.
Poyner Spruill LLP
301 Fayetteville St., Suite 1900
Raleigh, NC 27601

Signature

Edwin M. Speas, Jr. /cpm with permission

- Deputy CSC Assistant CSC Clerk Of Superior Court
Magistrate Attorney/DA District Court Judge
Superior Court Judge

Telephone No. Of Applicant Or Applicant's Attorney

919-783-2881

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- personal delivery registered or certified mail, receipt requested and attached.
telephone communication by Sheriff (use only for a witness subpoenaed to appear and testify).
telephone communication by local law enforcement agency (use only for a witness subpoenaed to appear and testify in a criminal case).

NOTE TO COURT: If the witness was served by telephone communication from a local law enforcement agency in a criminal case, the court may not issue a show cause order or order for arrest against the witness until the witness has been served personally with the written subpoena.

I was unable to serve this subpoena. Reason unable to serve:

Service Fee \$

Paid Due

Date Served

Name Of Authorized Server (type or print)

Signature Of Authorized Server

Title/Agency

NOTE TO PARTY REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

**NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).**

**(c) Protection of Persons Subject to Subpoena**

- (1) **Avoid undue burden or expense.** - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.
- (2) **For production of public records or hospital medical records.** - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.
- (3) **Written objection to subpoenas.** - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:
  - a. The subpoena fails to allow reasonable time for compliance.
  - b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
  - c. The subpoena subjects a person to an undue burden or expense.
  - d. The subpoena is otherwise unreasonable or oppressive.
  - e. The subpoena is procedurally defective.
- (4) **Order of court required to override objection.** - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.
- (5) **Motion to quash or modify subpoena.** - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

- (6) **Order to compel: expenses to comply with subpoena.** - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.
- (7) **Trade secrets; confidential information.** - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.
- (8) **Order to quash: expenses.** - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

**(d) Duties in Responding to Subpoena**

- (1) **Form of response.** - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (2) **Form of producing electronically stored information not specified.** - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.
- (3) **Electronically stored information in only one form.** - The person responding need not produce the same electronically stored information in more than one form.
- (4) **Inaccessible electronically stored information.** - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.
- (5) **Specificity of objection.** - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

**INFORMATION FOR WITNESS**

**NOTE:** If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

**DUTIES OF A WITNESS**

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

**BRIBING OR THREATENING A WITNESS**

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

**WITNESS FEE**

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you.

**ATTACHMENT TO MARCH 8, 2019 SUBPOENA TO NORTH CAROLINA  
REPUBLICAN PARTY**

**INSTRUCTIONS**

For the purposes of this Subpoena, the following instructions shall apply as set forth below except as otherwise required by context:

1. **BE ADVISED** that under Rule 37 of the North Carolina Rules of Civil Procedure, if you fail to respond to a request made herein under Rule 30, or if you give an evasive or incomplete response, the Plaintiffs may move for a court order compelling you to respond. If such motion is granted, the court may require you to pay the reasonable costs incurred in obtaining the order, including attorneys' fees. Failure to comply with such a court order may result in further sanctions or in contempt of court.
2. **Electronically-stored information:** This Subpoena includes requests to permit the forensic copying and examination of electronically stored information ("ESI"), as well as for the production of ESI. The purpose of obtaining ESI from you is to obtain all metadata, residual data, file fragments, and other information that is not reasonably accessible for forensic examination of authenticity. Any storage device that contains, or may contain, ESI requested shall be produced for forensic copying and examination. Forensic copying usually may be done on-site, without taking possession of your computing devices, at minimal inconvenience, cost, or interruption to you. The forensic copying will eliminate the need for you to search all storage devices or sift through a vast amount of information. Once forensic copies are made, the parties may agree on search terms to reduce costs and to preserve privacy of non-discoverable information.
3. Words used in the singular number shall include the plural number, and words used in the plural number shall refer to the singular number as well.
4. **If any documents, communications, ESI, or responses are withheld on the ground of any privilege, identify the following:**
  - A. the names and addresses of the speaker or author of the communication or document;
  - B. the date of the communication or document;
  - C. the name and address of any person to whom the communication was made or the document was sent or to whom copies were sent or circulated at any time;
  - D. the type of document or communication (e.g., letter, memorandum, invoice, contract, etc.);
  - E. the name and address of any person currently in possession of the document or a copy thereof; and

F. the privilege claimed and specific grounds therefor.

### DEFINITIONS

For purposes of this Subpoena, the following definitions shall apply except as otherwise required by context:

1. "2011 Plans" mean the 2011 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in November 2011, including all drafts thereof.
2. "2017 Plans" mean the 2017 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in August 2017, including all drafts thereof.
3. "2011 Unchanged Districts" means the state legislative districts enacted by the General Assembly under the 2011 Plans that were not altered under the 2017 Plans, including all drafts thereof.
4. The "2017 Plans Criteria" refer to the criteria that the North Carolina House and Senate Redistricting Committees adopted for the 2017 Plans.
5. "HB 927" shall refer to North Carolina House Bill 927 and Session Law 2017-208, enacted on August 30, 2017 (and may also be referred to as the "2017 House Plan").
6. "SB 691" shall refer to North Carolina Senate Bill 691 and Session Law 2017-207, enacted on August 31, 2017 (and may also be referred to as the "2017 Senate Plan").
7. "HB 937" shall refer to North Carolina House Bill 937 and Session Law 2011-404, enacted on July 28, 2011, text corrected by Session Law 2011-416 on November 7, 2011.
8. "SB 455" shall refer to North Carolina Senate Bill 455 and Session Law 2011-402, enacted on July 27, 2011, text corrected by Session Law 2011-413 on November 7, 2011.
9. "SB 453" shall refer to North Carolina Senate Bill 453 and Session Law 2011-403, text corrected by Session Law 2011-414 on November 7, 2011.
10. "SB 2" shall refer to North Carolina Senate Bill 2 and Session Law 2016-1 enacted on February 19, 2016.
11. "You" and "Your" refers to all branches of your organization, including departments, agencies, committees, and subcommittees, as well as attorneys, representatives, members, employees, agents, and others acting on behalf of the North Carolina Republican party and its affiliates.

12. "Document" is used in its broadest sense and is intended to be comprehensive and to include, without limitation, a record, in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) it is maintained, and includes originals and each and every non-identical copy of all writings of every kind, including drafts, legal pleadings, brochures, circulars, advertisements, letters, internal memoranda, minutes, notes or records of meetings, reports, comments, affidavits, statements, summaries, messages, worksheets, notes, correspondence, diaries, calendars, appointment books, registers, travel records, tables, calculations, books of account, budgets, bookkeeping or accounting records, telephone records, tables, stenographic notes, financial data, checks, receipts, financial statements, annual reports, accountants' work papers, analyses, forecasts, statistical or other projections, newspaper articles, press releases, publications, tabulations, graphs, charts, maps, public records, telegrams, books, facsimiles, agreements, opinions or reports of experts, records or transcripts of conversations, discussions, conferences, meetings or interviews, whether in person or by telephone or by any other means and all other forms or types of written or printed matter or tangible things on which any words, phrases, or numbers are affixed, however produced or reproduced and wherever located, which are in Your possession, custody or control. The term "Document" includes electronic mail and attachments, data processing or computer printouts, tapes, documents contained on floppy disks, hard disks, computer hard drives, CDs, and DVDs, or retrieval listings, together with programs and program documentation necessary to utilize or retrieve such information, and all other mechanical or electronic means of storing or recording information, as well as tape, film or cassette sound or visual recordings and reproduction for film impressions of any of the aforementioned writings.
13. "Communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons, by any means or mode of conveying information including, but not limited to, telephone, television, or telegraph or electronic mail.
14. A request seeking production of communications between you and an individual or entity includes communications between you and the individual or entity's agents, officers, members, employees, consultants, or representatives.

**LIST OF DOCUMENTS AND THINGS TO BE PRODUCED**  
**PURSUANT TO THIS SUBPOENA**

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

district lines for the North Carolina House of Representatives or the North Carolina Senate.

2. All documents in your possession, custody, or control relating to the involvement of the Republican State Leadership Committee, the Republican National Committee, the National Republican Congressional Committee, the Republican Governors Association, the Redistricting Majority Project, James Arthur (“Art”) Pope, Real Jobs NC, Tom Hofeller, John Morgan, Dale Oldham, Joel Raupe, Fair and Legal Redistricting North Carolina, Sen. Philip Berger, Sen. Ralph Hise, Sen. Dan Bishop, Sen. John Alexander, Former Sen. Trudy Wade, Rep. Tim Moore, Rep. David Lewis, Former Rep. Nelson Dollar, James Blaine, Brent Woodcox, or the State Government Leadership Fund in the redrawing or proposed redrawing of district lines for the North Carolina House of Representatives or the North Carolina Senate from January 1, 2009 to the present.
3. All documents in your possession, custody, or control regarding or relating to any consultant or other person or organization who provided assistance, whether paid or unpaid, relating to the redistricting or proposed redistricting of the North Carolina House of Representatives or North Carolina Senate from January 1, 2009 to the present, including but not limited to: (a) contracts and agreements, whether oral or written, and documents reflecting such contracts and agreements; (b) communications with such persons relating to any maps drawn or prepared or redistricting in general; (c) reports (draft or final) or analyses prepared regarding or relating to such reports or analyses; (d) information shared with such persons to assist the person in their work related to preparing or analyzing any maps; and (e) invoices or payments submitted to/from such persons.
4. All documents regarding or relating to the consideration of any factors in creating any draft or final versions of any map for the North Carolina House of Representatives or North Carolina Senate from January 1, 2009 to the present, including but not limited to: (a) compactness; (b) contiguity; (c) population equality; (d) incumbency protection; (e) competitiveness; (f) preservation of communities of interest; (g) likelihood of election outcomes; (h) past election outcomes, either collectively or singularly; (i) Voting Rights Act compliance; (j) location of political campaign contributors; (k) location of the home of any candidate or potential candidate for the North Carolina General Assembly; and (l) location of any county, municipal, or other political boundary.
5. All documents in your possession, custody, or control reflecting communications with any member, group of members, or prospective members of the North Carolina General Assembly regarding or relating to HB 927, SB 691, HB, 937, and/or SB 455.
6. All documents in your possession, custody, or control reflecting communications with any person or entity regarding the redistricting of the North Carolina House of Representatives or the North Carolina Senate from January 1, 2009 to present, including but not limited to the Republican State Leadership Committee, the Republican National Committee, the National Republican Congressional Committee, the Republican

Governors Association, the Redistricting Majority Project, James Arthur (“Art”) Pope, Real Jobs NC, Tom Hofeller, John Morgan, Dale Oldham, Joel Raupe, Fair and Legal Redistricting North Carolina, Sen. Philip Berger, Sen. Ralph Hise, Sen. Dan Bishop, Sen. John Alexander, Former Sen. Trudy Wade, Rep. Tim Moore, Rep. David Lewis, Former Rep. Nelson Dollar, James Blaine, Brent Woodcox, the State Government Leadership Fund, or any of the defendants in this action.

7. All documents in your possession, custody, or control regarding or relating to any conference, meeting, or training concerning the topic of redistricting that occurred from January 1, 2009 to present, including but not limited to (a) agendas; (b) minutes or notes; (c) any documents provided to participants prior to, at or after the event; (d) invitations; (e) invoices or requests for reimbursement; (f) participation lists; and (g) communications relating to the meeting, conference, or training.
8. All documents in your possession, custody, or control reflecting communications with any member or group of members of the North Carolina General Assembly, regarding or relating to any reasons why any member or group of members of the North Carolina General Assembly voted in favor or of against HB 927, SB 691, HB, 937, and/or SB 455, SB 2, and SB 453.
9. All documents in your possession, custody, or control regarding or relating to payments or reimbursements to/from You, the Republican State Leadership Committee, the Republican National Committee, the National Republican Congressional Committee, the Republican Governors Association, the Redistricting Majority Project, James Arthur (“Art”) Pope, Real Jobs NC, Tom Hofeller, John Morgan, Dale Oldham, Joel Raupe, Fair and Legal Redistricting North Carolina, Sen. Philip Berger, Sen. Ralph Hise, Sen. Dan Bishop, Sen. John Alexander, Former Sen. Trudy Wade, Rep. Tim Moore, Rep. David Lewis, Former Rep. Nelson Dollar, James Blaine, Brent Woodcox, the State Government Leadership Fund, or any of the defendants in this action, related to the redistricting of the North Carolina House of Representatives or the North Carolina Senate from January 1, 2009 to the present, or regarding or relating to aggregate finance expenditures in support of Republican legislative candidates in North Carolina from January 1, 2011 to present.



**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  
Paul M. Cox  
NC Department of Justice  
P.O. Box 629  
114 W. Edenton St.  
Raleigh, NC 27602  
amajmundar@ncdoj.gov  
sbrennan@ncdoj.gov  
pcox@ncdoj.gov

*Counsel for the State Board of Elections and  
Ethics Enforcement and its members*

John E. Branch III  
H. Denton Worrell  
Nathaniel J. Pencook  
Shanahan McDougal, PLLC  
128 E. Hargett Street, Suite 300  
Raleigh, NC 27601  
jbranch@shanahanmcdougal.com  
dworrell@shanahanmcdougal.com  
npencook@shanahanmcdougal.com  
*Counsel for the Defendant-Intervenors*

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  
*Counsel for the Legislative Defendants*

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 8<sup>th</sup> day of March, 2019.

  
\_\_\_\_\_  
Caroline P. Mackie

# **EXHIBIT B**

## Jacobson, Daniel

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**From:** Mackie, Caroline P. <CMackie@poynerspruill.com>  
**Sent:** Thursday, May 2, 2019 3:25 PM  
**To:** Jones, Stanton; Theodore, Elisabeth; Speas, Edwin M.; Jacobson, Daniel;  
zzz.External.AKhanna@perkinscoie.com  
**Subject:** Fwd: Common Cause v. Lewis (18-CVS-14001) - Subpoena to NC Republican Party

External E-mail

FYI

Caroline Mackie  
Poyner Spruill LLP  
[cmackie@poynerspruill.com](mailto:cmackie@poynerspruill.com)  
919.783.1108

Begin forwarded message:

**From:** John Lewis <[ncgop8th@gmail.com](mailto:ncgop8th@gmail.com)>  
**Date:** May 2, 2019 at 3:18:52 PM EDT  
**To:** "Mackie, Caroline P." <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>  
**Subject:** Re: Common Cause v. Lewis (18-CVS-14001) - Subpoena to NC Republican Party

The email accounts are being search. I will verify which email accounts, and I have passed along the additional key words to be included in the search parameters.

John Lewis

On Thu, May 2, 2019 at 11:37 AM Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)> wrote:

John,

First, can you confirm whether current party staff and leaders are searching or have searched their email accounts at all? If so, please let me know whose accounts have been searched and what terms were used for that search.

Second, we would suggest the following terms for a search of the hard drives and all email accounts of staff and leadership:

Redistrict!

Gerrymander!

Hofeller

Oldham

Wynn

[ceticheal@aol.com](mailto:ceticheal@aol.com)

[thofeller@rnchq.org](mailto:thofeller@rnchq.org)

[dloesq@aol.com](mailto:dloesq@aol.com)

HB 927

SB 691

HB 937

SB 455

SB 453

SB 2

House Plan

Senate Plan

Thanks,

Caroline

**From:** John Lewis [mailto:[ncgop8th@gmail.com](mailto:ncgop8th@gmail.com)]

**Sent:** Thursday, May 02, 2019 10:03 AM

**To:** Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>

**Subject:** Re: Common Cause v. Lewis (18-CVS-14001) - Subpoena to NC Republican Party

As I have mention previously, the North Carolina Republican Party intends to fully comply with the subpoena. As an update, we have located several hard drives and computers which we believe will contain any information relating to redistricting matter. These items have been delivered to an IT company to crack the password protection and to begin performing key word searches for relevant documents. We are also performing key word searches on hardware currently located at our headquarters as well. As soon as we have the results of our searches we will produce the information.

In an effort to ensure full compliance, if there are particular key word searches that you desire to be performed, please provide that information to me and I will have those searches performed as well.

We hope to have information available very shortly.

John M. Lewis

On Mon, Apr 29, 2019 at 2:55 PM Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)> wrote:

John,

I write to follow up on our phone conversation from April 17 regarding the subpoena served on the NC Republican Party in the above-referenced case. In that conversation, you informed me that the Party had a hard drive containing responsive material that was encrypted, but the Party was in the process of hiring someone to access it. You also stated that the current Executive Director and the two prior directors said “they had nothing to do with redistricting,” but that all staff were searching their email for responsive documents.

In the meantime, out of an abundance of caution, we filed a motion to compel because the Party had not responded to the subpoena. To date, we have received nothing from the NC Republican Party in response to the subpoena served on March 8 (with a production date of April 8). As of today, we have not calendared that motion for hearing. Given the passage of time, the case management schedule, and the considerable tardiness of the Party, we can wait no longer.

We intend to inform the court on Friday, May 3 of these facts and to ask the court to take action on the motion to compel, unless the Party’s document production has been completed by then. Please also send us confirmation of the search terms the Party has used in searching documents and emails and send us the list of custodians whose materials the Party is searching.

Thank you for your prompt attention to this matter, and I look forward to hearing back from you.

Caroline

Caroline P. Mackie | Partner



301 Fayetteville Street, Suite 1900, Raleigh, NC 27601

PO Box 1801, Raleigh NC 27602-1801

**D:** 919 783 1108 | **M:** 919 909-8036

[cmackie@poynerspruill.com](mailto:cmackie@poynerspruill.com) | [www.poynerspruill.com](http://www.poynerspruill.com)



\*\*\*\*\*

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\*\*\*\*\*

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