

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' MOTION FOR
THE COURT TO ISSUE
DIRECTION TO
LEGISLATIVE DEFENDANTS**

2019 JUN -6 A 9:25
WAKE COUNTY C.O.C.
BY 

FILED

Plaintiffs bring this motion respectfully requesting that the Court issue certain direction to Legislative Defendants in light of recent developments relating to the electronic storage devices produced by Stephanie Hofeller to Plaintiffs in response to Plaintiffs' February 13, 2019 subpoena to Ms. Hofeller. In a May 31, 2019 letter to Plaintiffs' counsel, Legislative Defendants purported, unilaterally and without any plausible authorization, to designate "the entirety" of the Hofeller files as "Highly Confidential/Outside Attorneys' Eyes Only" in a transparent effort to conceal evidence of wrongdoing by Legislative Defendants and others. Legislative Defendants' May 31 letter further demanded, again without any plausible basis, that Plaintiffs return and destroy the Hofeller files in their entirety. Each of these attempts by Legislative Defendants to conceal evidence that is extraordinarily relevant to this case is unjustified and improper.

For the reasons set forth in detail below, Plaintiffs respectfully request that the Court direct Legislative Defendants as follows: (1) Legislative Defendants shall not further pursue the return or destruction of material properly produced by other parties or third parties in response to lawful court process in discovery in this case; and (2) Legislative Defendants shall not attempt to unilaterally designate material produced in discovery by other parties or third parties as Confidential or Highly Confidential under the Consent Protective Order.

BACKGROUND

As the Court knows, on February 13, 2019, Plaintiffs issued a third-party subpoena pursuant to Rule 45 to Stephanie Hofeller, the daughter of the late mapmaker Dr. Thomas Hofeller who created the redistricting plans at issue in this case (the "2017 Plans"). The subpoena requested all documents in Ms. Hofeller's possession, custody, or control relating to Dr. Hofeller's work on the challenged plans, as well as "[a]ny storage device" in Ms. Hofeller's possession, custody, or control that may contain such documents or any information "relating to"

such documents. Plaintiffs emailed a copy of the subpoena to all parties in this case on the same day the subpoena was served, February 13, 2019. Neither Legislative Defendants nor any other party or non-party moved to quash or otherwise objected to the subpoena.

In mid-March 2019, in response to the subpoena, Ms. Hofeller produced four external hard drives and eighteen thumb drives containing over 75,000 files (the “Hofeller files”). Plaintiffs received these storage devices on March 13, 2019, and e-mailed notice to all Defendants on March 20, 2019, pursuant to Rule 45(d1). A dispute subsequently arose between the parties regarding whether to filter out certain files containing sensitive personal information of the Hofeller family before providing copies of the contents of the devices to Defendants. In attempting to negotiate a resolution of that issue, on April 9, 2019, Plaintiffs sent all Defendants a searchable index listing the files names and files paths of the over 75,000 Hofeller files. And in early May, pursuant to the Court’s direction, Plaintiffs provided complete copies of all of the Hofeller files to all three sets of Defendants.

It has now been nearly four months since all Defendants received notice of the subpoena to Ms. Hofeller. It has been two-and-a-half months since all Defendants received notice of Plaintiffs’ receipt of the Hofeller files in response to the subpoena. It has been nearly two months since all Defendants received a substantially complete searchable index of the Hofeller files. And it has been more than a month since all Defendants received all of the Hofeller files themselves. Over this time, neither Legislative Defendants nor anyone else has filed a motion with this Court seeking a protective order or any other restriction over any of the Hofeller files.

On May 17, Plaintiffs took a trial-preservation deposition of Ms. Hofeller, with her own counsel defending the deposition, and also counsel for each set of Defendants present and afforded the opportunity to examine Ms. Hofeller. (Legislative Defendants’ counsel examined

Ms. Hofeller for many hours.) Ms. Hofeller testified that she obtained the storage devices at issue with her mother's knowledge and express approval, while visiting her parents' home in Raleigh on October 11, 2018. Ex. A (S. Hofeller Dep.) at 20:3-26:10; 52:6-10; 81:8-82:2; 110:17-11:24. Specifically, Ms. Hofeller testified that she asked her mother, "Can I take these [devices]," and her mother "said absolutely" and in fact "encouraged" Ms. Hofeller to take them. *Id.* at 21:6-11, 26:3-10. Ms. Hofeller testified that "[her] mother gave to [her] unconditionally" "everything on those hard drives that [her] father had left in his room." *Id.* at 81:8-82:2.

Ms. Hofeller testified that she again sought and received her mother's consent before producing the Hofeller files to Plaintiffs in response to their subpoena. *Id.* at 39:21-41:8. Ms. Hofeller further testified that, in giving consent to produce the drives in response to the subpoena, her mother knew that the drives contained Dr. Hofeller's "work-related files." *Id.* at 56:22-57:18; *see id.* at 59:13-18 ("Q. At what point in time did you discuss with your mother the possibility of turning over your father's business records to Common Cause or to Arnold & Porter? A. The subpoena. That -- that would be when we specifically discussed that.").

In the course of reviewing the Hofeller files for this case, Plaintiffs' counsel recently realized that several of the files were also relevant to another pending lawsuit in which Plaintiffs' same counsel from Arnold & Porter are representing different plaintiffs—a federal challenge to the addition of a citizenship question on the 2020 Decennial Census, which is pending before the United States Supreme Court. Specifically, Plaintiffs' counsel realized that several files revealed that Dr. Hofeller played a substantial, previously undisclosed role in orchestrating the Department of Justice's request to add a citizenship question to the Census, and that this fact called into question the veracity of testimony by two government witnesses in the case, and also bore directly on central merits issues in the case. On May 30, 2019, the plaintiffs in the New

York action filed a motion in the district court for an order to show cause whether sanctions or other appropriate relief are warranted in light of the new evidence. *New York v. Dep't of Commerce*, No. 18-cv-2921, ECF No. 595 (S.D.N.Y.). The plaintiffs submitted notice of their district court filing to the Supreme Court. *Dep't of Commerce v. New York*, No. 18-966 (U.S.).

The very next day after Plaintiffs disclosed this evidence of potential government misconduct, Legislative Defendants in this case sent a letter to Plaintiffs' counsel purporting to take certain actions with respect to the Hofeller files, suggesting that Plaintiffs' counsel have been "neglecting [their] professional responsibilities," and making various demands. Ex. B at 5. First, Legislative Defendants' letter purported to suddenly and unilaterally designate "the entirety" of the Hofeller files as "Highly Confidential/Outside Attorney's Eyes Only" under the Consent Protective Order in this case. *Id.* at 1. Legislative Defendants' stated reason for taking this action—which is unauthorized and without effect under the plain terms of the Consent Protective Order for reasons explained below—was that there are some unidentified number of unspecified files supposedly containing "confidential financial information" beyond the 1,001 files designated Highly Confidential pursuant to the Court's May 1 order. *Id.* at 1. Legislative Defendants did not identify a single additional file containing "confidential financial information," did not provide any estimate of the number of such files, and did not make any claim that the number of such files is more than a miniscule fraction of the total Hofeller files.

Second, Legislative Defendants' May 31 letter asserted that Plaintiffs' counsel have "apparently been reviewing likely privileged materials" of Legislative Defendants. *Id.* at 1. But the letter listed only *five* specific files that Legislative Defendants asserted may be privileged on the ground that those five files were "expert witness materials created by Dr. Hofeller in connection with North Carolina legal matters." *Id.* at 2. Legislative Defendants provided no

substantiation for their assertion that Plaintiffs' counsel had "apparently" reviewed any of those five files or any other similar files.

Third, Legislative Defendants expressed various "concerns" about the circumstances under which Ms. Hofeller acquired the Hofeller files and produced them to Plaintiffs in response to their February 13, 2019 subpoena. *See id.* at 2-3. The details of these baseless concerns and Plaintiffs' responses are set forth in full in the attached letters and need not be repeated here.

Fourth, Legislative Defendants made a series of specific demands of Plaintiffs. In particular, Legislative Defendants demanded that Plaintiffs:

- 1) "immediately cease and desist reviewing all materials produced by Ms. Hofeller, and particularly all files unrelated to North Carolina";
- 2) "immediately cease and desist providing any or all of these materials to third parties unrelated to this case, as [Plaintiffs' counsel] have apparently recently done in a matter pending in New York";
- 3) "return all of the produced materials to the Trustee for the Kathleen H. Hofeller Irrevocable Trust to allow for a privilege review of Dr. Hofeller's materials";
- 4) "identify by name all individuals [Plaintiffs' counsel] employ who have reviewed and produced materials, the date[s] on which they reviewed those materials, and which materials they reviewed with sufficient specificity that [Legislative Defendants] can determine which materials are at issue";
- 5) "inform [Legislative Defendants] which of these wrongfully produced materials have been shared outside [Plaintiffs' counsel's] firms, including but not limited to any expert witnesses in the case, and, if so, with whom and which materials with

sufficient specificity to allow [Legislative Defendants] to assess the scope of the intrusion into protected materials”; and

- 6) “attest that all copies of the materials wrongfully produced by Ms. Hofeller are no longer in [Plaintiffs’ counsel’s] possession and have been *destroyed*.”

Id. at 4-5 (emphasis added).

Finally, Legislative Defendants stated, without elaboration, that they “insist on” Plaintiffs’ counsel’s “compliance with the North Carolina Rules of Civil Procedure and Rules of Professional Responsibility.” *Id.* at 5. Legislative Defendants’ counsel continued: “Should you persist in neglecting your professional responsibilities, our clients are considering all options available to them to enforce their rights.” *Id.* Immediately thereafter, Legislative Defendants demanded “compliance with the steps outlined above by June 5, 2019,” including that Plaintiffs “return” all of the Hofeller files to a “Trustee” and “destroy[] . . . all copies of the materials.” *Id.*

Plaintiffs responded to this letter on June 5, 2019. In their response, Plaintiffs explained that the Consent Protective Order does not authorize Legislative Defendants to designate *any* of the Hofeller files as Highly Confidential, let alone *all* of them. Ex. C at 2. As Plaintiffs explained, the Consent Protective Order unambiguously provides that only “*the Party producing the material*” may designate the material as Confidential or Highly Confidential under the Consent Protective Order. *Id.* (quoting Consent Protective Order ¶ 1) (emphasis added); *see also* Consent Protective Order ¶¶ 2-3 (only “the Producing party may designate” materials as Confidential or Highly Confidential). Legislative Defendants are not “the Producing party” of the Hofeller files.

With respect to Legislative Defendants’ unsubstantiated allegations that Plaintiffs’ counsel “apparently” have reviewed privileged materials in the Hofeller files, Plaintiffs’ counsel

made clear that they have no intention of reviewing any of the five specific documents that Legislative Defendants identified in their letter, nor have they reviewed—or have any intention of reviewing—any other draft expert report or draft declaration prepared in connection with litigation. *Id.* at 3. Plaintiffs further noted, however, that Legislative Defendants have waived any privilege they may have held over any information in the Hofeller files. *Id.* at 4-13. Under well-settled case law, Legislative Defendants waived any privilege when they did not move to quash Plaintiffs subpoena to Ms. Hofeller or otherwise raise any objection to the subpoena. *Id.* at 4-5 (citing cases). Legislative Defendants independently waived privilege when they acquiesced to—and indeed demanded—Plaintiffs’ production of complete copies of all of the Hofeller files to State Defendants and Intervenor Defendants, without any filtering or privilege-related protections in place. *Id.* at 5-6 (citing cases).

Plaintiffs also explained in their response that any purported claim of work-product privilege with respect to Dr. Hofeller’s work in *Covington* or on the 2017 Plans challenged in this case is overcome by Plaintiffs’ substantial need for the information and the prejudice to Plaintiffs and the public interest from concealing it. *Id.* at 6-13. Specifically, Legislative Defendants cannot possibly maintain any work-product privilege claim over such materials because the Hofeller files reveal false statements and material omissions made by Legislative Defendants to the federal district court in *Covington* and to the public, in at least three respects:

- In July 2017, Legislative Defendants convinced the federal district court in *Covington* not to order special elections under new remedial maps in 2017, based on Legislative Defendants’ repeated statements that they had not yet started drawing new districts *at all* and needed sufficient time to develop criteria, draft the plans, and receive public input. *See id.* at 7-10. The Hofeller files reveal that not only had work on the remedial plans *begun* well before July 2017, but that the new state House and state Senate plans were already substantially *complete* by the end of June 2017. *See id.* at 10.
- In a September 7, 2017 submission to the *Covington* court, Legislative Defendants purported to describe the “process” and “criteria” used to draw the 2017 Plans. They

stated that the process for drawing new plans began *at the end of June 2017* and that the criteria used were the ones adopted *on August 10, 2017*. *Id.* at 11. The Hofeller files reveal that Dr. Hofeller had in fact already substantially *completed* drawing the 2017 Plans in June 2017, before Legislative Defendants stated the process had even *begun* and a month-and-a-half before the adopted criteria were even introduced and adopted. *See id.* at 11-12.

- Legislative Defendants repeatedly stated to the *Covington* court and at public hearings that neither they nor Dr. Hofeller had any racial data on the new districts being developed. *Id.* at 12. They said that “data regarding the race of voters . . . *was not even loaded into the computer used by the map drawer to construct the districts.*” *Id.* (quoting *Covington*, ECF No. 192 at 28) (emphasis added). The Hofeller files reveal that Dr. Hofeller had data on the racial composition of the proposed districts in every one of his draft maps, including drafts prepared *after* he was formally retained by Legislative Defendants. *Id.* at 12-13.

Plaintiffs explained in their June 5 response letter that the evidence and full details of these false statements will be made clear at trial, and that the false statements not only overcome any work-product privilege claim, but also raise troubling questions regarding Legislative Defendants’ recent efforts to use improper means to conceal the Hofeller files in their entirety. *Id.* at 13.

Finally, Plaintiffs’ June 5 letter rebutted Legislative Defendants’ allegations and mischaracterizations regarding the circumstances under which Ms. Hofeller obtained and produced the Hofeller files, and Plaintiffs refused to accede to Legislative Defendants’ specific demands that Plaintiffs return and destroy material evidence to this case. *Id.* at 13-18.

ARGUMENT

I. This Court Should Direct Legislative Defendants Not To Pursue Further the Return and/or Destruction of the Hofeller Files

Plaintiffs request that this Court direct Legislative Defendants to cease pursuing the return and/or destruction of the Hofeller files. Legislative Defendants have demanded that Plaintiffs “return” all of the Hofeller files to a “Trustee” of an Irrevocable Trust, and Legislative Defendants have further demanded that Plaintiffs “destroy” all remaining “copies of the materials.” Ex. B at 4-5.

Such demands are improper and should stop. Plaintiffs obtained the Hofeller files through the lawful process of this Court—a subpoena issued by Plaintiffs to Ms. Hofeller, through her attorney, with notice to all Defendants on the same day the subpoena was served. Ms. Hofeller produced the Hofeller files to Plaintiffs in response to their subpoena after no party or non-party moved to quash or otherwise raised any objection to the subpoena—none at all. The Hofeller files contain evidence that is highly relevant to the merits of this lawsuit, and Legislative Defendants’ extrajudicial efforts to interfere with Plaintiffs’ use of such lawfully obtained evidence—and indeed to have Plaintiffs “return” and/or “destroy” such evidence—are troubling. Legislative Defendants’ actions are even more concerning given that the evidence in question appears to reveal false statements they made to a federal court and the public.¹

If Legislative Defendants believe there are grounds for preventing or limiting introduction of evidence in the Hofeller files at trial, they should file a motion *in limine* or an objection when the evidence is introduced. They should not be making out-of-court demands that Plaintiffs’ counsel destroy evidence that was obtained through a lawful subpoena and is highly materials to the merits of Plaintiffs’ case. Plaintiffs respectfully request that the Court direct Legislative Defendants to cease in such efforts.

¹ To the extent Legislative Defendants’ demands are accompanied by threats directed to Plaintiffs’ counsel regarding their purported “neglect[.]” of their “professional responsibilities,” they are all the more improper. Ex. B at 5. A party may not seek to gain leverage or an advantage in civil litigation by “sending threatening letters to opposing counsel” alleging purported disciplinary violations. *Johnson v. EEOC Charlotte Dist. Office*, 2016 WL 3514456, at *5 n.2 (W.D.N.C. June 27, 2016); *see also Nieman v. Grange Mut. Ins. Co.*, 2012 WL 3779090, at *5 (C.D. Ill. Aug. 31, 2012) (admonishing party for “litigation tactics which are harassing and intimidating,” including threatening opposing counsel with allegations of ethical violations). Here, Legislative Defendants do not specify a single implicated Rule of Professional of Responsibility or even attempt to identify what “professional responsibilities” Plaintiffs’ counsel are purportedly “neglecting.” Ex. B at 5. Indeed, Plaintiffs’ counsel have acted cautiously, ethically, and above-board at every turn, and will continue to do so at all times.

II. **This Court Should Direct Legislative Defendants Not to Attempt to Designate Documents in the Hofeller Files as Confidential or Highly Confidential Under the Consent Protective Order**

This Court should further direct Legislative Defendants not to attempt again to unilaterally designate materials produced by Ms. Hofeller or other third parties as Confidential or Highly Confidential under the Consent Protective Order. Legislative Defendants' purported designation of "the entirety" of the Hofeller files as Highly Confidential in their May 31 letter is plainly not authorized under the Consent Protective Order, and seems to have been done for improper purposes.

The Consent Protective Order is unambiguous that *only* "the Party producing the material" in discovery may designate those materials as Confidential or Highly Confidential. Paragraph 1 of the Order states: "To fall within the scope of this Agreement, any such Confidential material shall be designated as 'CONFIDENTIAL' or 'HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY,' *by the Party producing the material.*" 4/5/19 Consent Protective Order ¶ 1 (emphasis added). Paragraphs 2 and 3 confirm that only "[t]he producing Party may designate" materials as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." *Id.* ¶¶ 2, 3 (emphasis added). Specifically, "[t]he producing Party may designate as 'CONFIDENTIAL' any materials that *it* produces in the litigation" subject to meeting certain confidentiality criteria, *id.* ¶ 3, and "[t]he producing Party may designate as 'HIGHLY CONFIDENTIAL/ OUTSIDE ATTORNEYS' EYES ONLY' (a) any non-public personal information, or (b) any CONFIDENTIAL material that *the producing party* reasonably and in good faith believes" meets certain additional criteria. *Id.* ¶ 3 (emphases added); *see id.* ¶ 13 (stating that the Order applies equally to "information produced by a non-Party").

Legislative Defendants clearly are not “the *producing* Party” of the Hofeller files, but rather are a “*receiving* party” of those files. Legislative Defendants have no authority to unilaterally designate any of the Hofeller files as Highly Confidential under the Consent Protective Order, let alone all of them. Legislative Defendants could not reasonably and in good faith have read the Consent Protective Order to provide otherwise.

The sudden and pretextual nature of Legislative Defendants’ attempted designation of material produced by a third party in discovery confirms as much. Legislative Defendants purported to designate each and every one of the over 75,000 documents in the Hofeller files as “Highly Confidential” because, supposedly, they have identified some unspecified and unknown number of files that contain “confidential financial information.” Ex. B at 1. Plaintiffs can represent to this Court, and Legislative Defendants cannot dispute, that the *vast* majority of documents in the Hofeller files have no financial information whatsoever. Legislative Defendants’ invocation of some small, unidentified number of files purportedly containing unspecified financial information as a basis to designate over 75,000 other files as Highly Confidential is a baseless and legally inoperative abuse of the Consent Protective Order.²

The true impetus for Legislative Defendants’ attempted designation of the Hofeller files is laid bare by the timing of their actions. Legislative Defendants purported to designate “the entirety” of the files as Highly Confidential just *one day* after several of the files—which exposed misconduct by federal government officials—were submitted to a federal district court and the United States Supreme Court in a case of national public importance. At a June 5

² Plaintiffs offered in their June 5 response that, if Legislative Defendants are genuinely concerned about the privacy of files containing “confidential financial information,” they should identify each such file, and Plaintiffs would consider jointly asking the Court to designate such files as Confidential or Highly Confidential, as appropriate, consistent with Plaintiffs’ cautious approach to the highly sensitive personal information of the Hofeller family since they first received the Hofeller files. *See* Pls.’ Mot. for Clarification Pursuant to Rule 45, filed 4/4/19.

hearing concerning the misconduct by public officials exposed by these several Hofeller files, the U.S. District Judge called the matter serious “serious” and set a schedule for full briefing on potential sanctions. Needless to say, concealing alleged misconduct by public officials is not a proper basis to designate materials as Highly Confidential/Outside Attorneys’ Eyes Only under this or any other protective order.

Contrary to Legislative Defendants’ suggestions in their May 31 letter, moreover, there was nothing improper about Plaintiffs’ counsel sharing relevant, non-confidential materials obtained in discovery with litigants in another lawsuit. To the contrary, courts “have overwhelmingly and decisively endorsed the sharing of discovery information among different plaintiffs, in different cases, in different courts.” *Burlington City Bd. of Educ. v. U.S. Mineral Prod. Co.*, 115 F.R.D. 188, 190 (M.D.N.C. 1987) (emphasis added); *accord United States v. Comstock*, 2012 WL 1119949, at *1 (E.D.N.C. Apr. 3, 2012) (“The general rule . . . is that information produced in discovery in a civil case may be used in other cases.”); *In re Accent Delight Int’l Ltd.*, 869 F.3d 121, 135 (2d Cir. 2017) (nothing “prevent[s] [a litigant] who lawfully has obtained discovery . . . from using the discovery elsewhere.”); *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Grp., Inc.*, 121 F.R.D. 264, 268-69 (M.D.N.C. 1988) (“[A] party needs to present good cause for prohibiting the dissemination of non-confidential discovery information or from prohibiting the utilization of such discovery in other litigation.”); *FTC v. Digital Interactive Assocs., Inc.*, 1996 WL 912156, at *3 (D. Colo. Nov. 18, 1996) (“[D]issemination of information to litigants in other forums is often encouraged for purposes of judicial economy.”); *United States v. Hooker Chemicals & Plastics Corp.*, 90 F.R.D. 421, 426 (W.D.N.Y. 1981) (similar); *Patterson v. Ford Motor Co.*, 85 F.R.D. 152, 153-54 (W.D. Tex. 1980) (similar).

Again, if Legislative Defendants seek to restrict use of the Hofeller files, they must seek relief from this Court. While Plaintiffs would strenuously oppose any such request, nothing prevents Legislative Defendants from seeking an order of some sort from this Court. Legislative Defendants have had months to seek such an order with respect to these materials, but neither they nor anyone else has made any attempt to do so. What Legislative Defendants cannot do is purport to unilaterally take out-of-court actions that are contrary to the Consent Protective Order entered by this Court.

* * *


Plaintiffs recognize that the relief sought in this motion is not common, but believe that the circumstances warrant it. Legislative Defendants' actions are not only improper, but have diverted Plaintiffs' time and resources away from the steep demands of preparing for the upcoming trial. Indeed, Plaintiffs' expert rebuttal reports are due at the end of this week, and Plaintiffs' counsel have been forced to spend significant time responding to Legislative Defendants' demands and improper attempted confidentiality designation. Legislative Defendants' conduct should be brought to a stop.

WHEREFORE, for the reasons stated above, Plaintiffs respectfully request that the Court enter an order directing that (1) Legislative Defendants shall not further pursue the return or destruction of material properly produced in response to lawful court process in discovery in this case; and (2) Legislative Defendants shall not attempt to designate material produced in discovery by other parties or third parties as Confidential or Highly Confidential under the Consent Protective Order.

Respectfully submitted this the 6th day of June, 2019

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By: _____


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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:

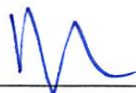
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This the 6th day of June, 2019.



Edwin M. Speas, Jr.

EXHIBIT A

1 PROCEEDINGS
 2 THE VIDEOGRAPHER: Going on the record
 3 at 9:38 a.m. Today's date is May the 17th,
 4 2019. This begins the video deposition of
 5 Stephanie Hofeller taken in the matter of
 6 Common Cause, et al., versus David Lewis, in
 7 his Official Capacity As Senior Chairman of
 8 the House Select Committee on Redistrict --
 9 Redistricting, et al. This is filed in the
 10 General Court of Justice, Superior Court
 11 Division, in Wake County, North Carolina,
 12 Case Number 18 CVS 014001.
 13 If counsel will please identify
 14 yourselves for the record and whom you
 15 represent and then our court reporter will
 16 swear in our witness.
 17 MR. JONES: Stanton Jones from Arnold &
 18 Porter for the plaintiffs.
 19 MR. SPEAS: Eddie Speas with Poyner
 20 Spruill for the plaintiffs.
 21 MR. COX: Paul Cox with the North
 22 Carolina Attorney General's Office for the
 23 State Board of Elections.
 24 MR. BRANCH: John Branch with Shanahan
 25 Law Group for the intervenor defendants.

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1 married name of Stephanie Hofeller Lizon?
 2 A. It was actually Stephanie Louise Lizon.
 3 Q. Okay. And now you -- you've dropped the
 4 Lizon; you just go by Stephanie Hofeller?
 5 A. That's right.
 6 Q. And that's your maiden name?
 7 A. Correct.
 8 Q. Excellent. Okay. I'll go over some brief
 9 ground rules for the deposition today if
 10 that's okay.
 11 A. Yes.
 12 Q. So you understand that you've taken an oath
 13 to tell the truth today?
 14 A. I do.
 15 Q. Great. And the court reporter is taking down
 16 everything that we say so let's try not to
 17 talk over one another. If you let me finish
 18 my question, I will let you finish your
 19 answer. Does that make sense?
 20 A. Acknowledged, yes.
 21 Q. Your -- your counsel may object to some of my
 22 questions today and -- and that's fine.
 23 Un- -- you understand that unless he
 24 instructs you not to answer a question, you
 25 should let him state his objection for the

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1 MR. FARR: Tom Farr with Ogletree
 2 Deakins for the def- -- legislative
 3 defendants.
 4 MS. SCULLY: Elizabeth Scully with
 5 BakerHostetler for the legislative
 6 defendants.
 7 MR. SPARKS: Tom Sparks representing
 8 the deponent, Stephanie Hofeller.
 9 * * * *
 10 STEPHANIE HOFELLER,
 11 having been first sworn or affirmed by the court
 12 reporter and Notary Public to tell the truth, the
 13 whole truth, and nothing but the truth, testified
 14 as follows:
 15 EXAMINATION
 16 BY MR. JONES:
 17 Q. Good morning, Ms. Hofeller.
 18 A. Hello.
 19 Q. I'm Stanton Jones from Arnold & Porter and I
 20 represent the plaintiffs in this lawsuit.
 21 Would you please state your full name for the
 22 record.
 23 A. Stephanie Louise Hofeller.
 24 Q. Excellent. And am I right that you
 25 previously went by what I believe is a

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1 record and then you'll go ahead and answer?
 2 A. Yes, I understand that.
 3 Q. Great. Is there any reason that you couldn't
 4 give complete, accurate, and truthful
 5 testimony today?
 6 A. No.
 7 Q. And if you want a break, just let me know.
 8 We'll finish the question and answer that
 9 we're doing and -- and happy to take a break
 10 whenever you'd like, okay?
 11 A. All right. Thanks.
 12 Q. What state do you live in?
 13 A. Kentucky.
 14 Q. Great. So you don't live in North Carolina?
 15 A. That's correct.
 16 Q. Okay. And where you live in Kentucky, how
 17 far is it from where we are in Raleigh?
 18 A. It's about a ten- or 11-hour drive.
 19 Q. Okay. Do you know, roughly how many miles is
 20 it?
 21 A. Roughly 650, something like that, I think.
 22 Q. Okay. And can you tell me, who -- who are
 23 your parents?
 24 A. My father is Thomas Brooks Hofeller and my
 25 mother is Kathleen Hartsough Hofeller.

8

1 Q. Great. So I have some questions about the
 2 subpoena that you received in this case. Is
 3 that okay?
 4 A. Yes.
 5 Q. Great. So earlier this year you received a
 6 subpoena from the plaintiffs in this case; is
 7 that right?
 8 A. That's correct.
 9 Q. Okay.
 10 MR. JONES: Mark this.
 11 (HOFELLER EXHIBIT 1 was marked for
 12 identification.)
 13 BY MR. JONES:
 14 Q. I'm showing you what's been marked as Exhibit
 15 1. Do you recognize this document as the
 16 subpoena that you received from the
 17 plaintiffs in this case?
 18 A. Yes. Yes, I do.
 19 Q. Okay. And do you see on the first page under
 20 name and address of person subpoenaed on the
 21 left side toward the top it says, Stephanie
 22 Hofeller Lizon? That -- that's you, correct?
 23 A. That is me.
 24 Q. Okay. Great. And it says, care of Tom
 25 Sparks, Esquire. That's -- that's your

1 attorney, correct?
 2 A. That's my attorney.
 3 Q. Great. Okay. And if you look down in the
 4 handwritten portion where there's a date and
 5 a signature, do you see it's dated February
 6 13th, 2019?
 7 A. I do.
 8 Q. Okay. And is -- does -- is that around the
 9 time that you recall receiving this subpoena?
 10 A. Yes.
 11 Q. When you received the subpoena, did you take
 12 a look at it?
 13 A. Yeah.
 14 Q. Great.
 15 A. I got it in a electronic format initially
 16 from my attorney because I wasn't actually in
 17 the state at that moment, but I was shortly
 18 after that.
 19 Q. Great. And if you flip a couple of pages
 20 ahead to what's -- what's marked as Page 2 at
 21 the bottom of the page, do you see where it
 22 says, list of documents and things to be
 23 produced pursuant to this subpoena?
 24 A. Yes, I do.
 25 Q. Okay. And when you received this subpoena in

1 February, did you review this -- this list of
 2 documents and things that were -- were asked
 3 to be produced?
 4 A. Yes, I did.
 5 Q. Okay. And did -- did you understand that the
 6 subpoena was requesting any electronic
 7 storage devices that had any of your father's
 8 work drawing maps for the North Carolina
 9 legislature?
 10 A. Yes.
 11 Q. Okay. Did you have any materials that were
 12 responsive to these requests in the subpoena?
 13 A. I did.
 14 Q. Okay. And -- and were -- am I right that
 15 those were electronic storage devices?
 16 A. Yes.
 17 Q. Okay.
 18 A. External hard drives and ad -- I don't know
 19 what the proper -- or what people prefer to
 20 call them, ad-stick, thumb drive, external
 21 storage devices to be used as backup
 22 principally.
 23 Q. Okay. So -- so the materials that you had
 24 that were responsive to the requests in the
 25 subpoena were -- were external hard drives

1 and external what we'll call thumb drives?
 2 A. That's correct.
 3 Q. Okay. Great.
 4 A. Nothing that -- that appeared to have been
 5 pulled out from an already assembled
 6 computer. These were all, you know, backup
 7 devices.
 8 Q. Okay. These were all external devices that
 9 you would need to plug into a computer some
 10 way --
 11 A. Correct.
 12 Q. -- to look at them? Okay. Am I right that
 13 these storage devices had previously belonged
 14 to your father?
 15 A. Yes.
 16 Q. Okay.
 17 A. And mother.
 18 Q. And -- and you understood that the storage
 19 devices contained your father's work on North
 20 Carolina legislative maps?
 21 MS. SCULLY: Objection to form,
 22 leading. You can answer.
 23 A. It was -- at what point you -- I would have
 24 to -- to ask you to clarify at what point
 25 it -- it was or wasn't clear. I knew -- when

1 I first saw them I knew that they were all
 2 belonging to my father and mother. I wasn't
 3 really sure which of them, if any, would have
 4 anything involving his work in North Carolina
 5 or elsewhere.
 6 Q. Got it. Let -- let's focus on the time when
 7 you received the subpoena and you --
 8 A. Oh, at that point, yes, I did know that it
 9 contained -- that all of those devices had at
 10 least -- at least one or two -- at least one
 11 or two files that would -- that were labeled
 12 in a -- in a way that it was obvious that
 13 they pertained to my father's work
 14 redistricting in North Carolina.
 15 Q. And did you send the storage devices -- those
 16 storage devices that we've been discussing to
 17 the plaintiffs' lawyers in response to the
 18 subpoena?
 19 A. Yes, I did.
 20 Q. Okay. Do you recall roughly when you sent
 21 them?
 22 A. I remember it was about a month after I
 23 received the subpoena. Originally, I -- my
 24 intention was to -- to bring them physically
 25 to Raleigh, but I got delayed and it was then

13

1 decided that it would be best for preserving
 2 the integrity of -- of the evidence that it
 3 would be going straight to a third party.
 4 Q. Great. And I'll represent to you that I
 5 received the materials you sent on March
 6 13th. Does that sound about right in terms
 7 of --
 8 A. That does.
 9 Q. -- the time?
 10 A. That does, actually. Where -- where I was in
 11 Kentucky, I couldn't even find a FedEx
 12 office. I had to go -- I had to go down the
 13 highway. I was surprised.
 14 MR. JONES: Can we mark this?
 15 (HOFELLER EXHIBIT 2 was marked for
 16 identification.)
 17 BY MR. JONES:
 18 Q. I'm showing you what's been marked as Exhibit
 19 2. On the -- you can take a moment to -- to
 20 flip through. That's fine. Go ahead.
 21 A. That's...
 22 Q. So my first question is, if you look at the
 23 very first page, do you -- do you recognize
 24 the -- the photograph -- the photographs
 25 there as images of the package that you sent

14

1 containing the storage devices in --
 2 A. Yes.
 3 Q. -- response to the subpoena?
 4 A. Yes, that does appear to be the box that I
 5 sent them in, exactly.
 6 Q. Great. And -- and on the first page, if you
 7 look at that top picture, it's addressed to
 8 R. Stanton Jones at Arnold & Porter, LLP, at
 9 an address in Washington, D.C. Is that the
 10 address where you sent the package?
 11 A. Yes.
 12 Q. Great. And if you flap -- flip to the second
 13 page, do you recognize those as additional
 14 photographs of the outside of the package
 15 that you sent with the storage devices in
 16 response to the subpoena?
 17 A. Yes.
 18 Q. If you flip to the third page, if you'll
 19 focus on the bottom image, do you recognize
 20 that as a photograph of the -- the interior
 21 of the box that you sent to the plaintiffs'
 22 lawyers with the storage devices in response
 23 to the subpoena?
 24 A. Yes.
 25 Q. Okay. If you flip to Page 4, do you

15

1 recognize the image there as being one of the
 2 thumb drives that you put in the -- in the
 3 package and sent to the plaintiffs' lawyers
 4 in response to the subpoena?
 5 A. Yes.
 6 Q. Okay. Do you remember offhand how many
 7 external hard drives there were and how many
 8 thumb drives there were?
 9 A. I know there were four external hard drives.
 10 I honestly don't remember exactly how many --
 11 you know, there were -- I -- I -- there were
 12 a couple of empty thumb drives in my -- in
 13 my, you know, possession so I -- I was making
 14 sure that I wasn't, you know, sending
 15 anything wrong. These were all the ones
 16 that -- that I got from my father, but I
 17 don't remember exactly -- from his room, but
 18 I don't remember exactly how many there were.
 19 Like eight or nine, maybe, was it, or seven?
 20 Q. So if I -- I'll represent to you that inside
 21 the package that we received that we're
 22 looking at photographs of there were -- there
 23 were four external hard drives, as you said,
 24 and also 18 thumb drives.
 25 A. 18, yeah. Okay.

16

1 Q. Does that seem right?
 2 A. Yeah.
 3 Q. Great.
 4 A. Yeah.
 5 MR. FARR: Excuse me. I don't mean to
 6 interrupt and I'm new to the game, but what
 7 were the stipulations about objections in
 8 this case? Are all objections reserved
 9 except for privilege and form of the
 10 question?
 11 MR. SPEAS: Yeah. That's the way we've
 12 been operating so far.
 13 MR. FARR: Okay. Thank you.
 14 BY MR. JONES:
 15 Q. I'm not going to go through every single
 16 photograph here. There's about 50 pages of
 17 photographs. But would you just take a
 18 moment and flip through them and if you could
 19 just tell me, do you recognize these as
 20 photographs of the storage devices, both the
 21 external hard drives and the thumb drives,
 22 that you sent to the plaintiffs' lawyers in
 23 response to the subpoena? Do you recognize
 24 them that way?
 25 A. So far, yes. It's a rainbow of colors. I

17

1 remember that, too. Yes, those look -- all
 2 of them I -- I remember.
 3 Q. Great. So having flipped through all of the
 4 photographs here, you recognize all of these
 5 images --
 6 A. Yes.
 7 Q. -- as being --
 8 A. I -- I don't see anything that I didn't have
 9 my hands on and put in that package.
 10 Q. Okay. Excellent. Would you flip to Page 23.
 11 Do you see the image there of a storage
 12 device with the label, NC Data?
 13 A. Yes, I do.
 14 Q. Do you recall that as one of the images that
 15 you sent?
 16 A. I do.
 17 Q. Or, sorry, as one of the --
 18 A. One of the --
 19 Q. -- storage devices?
 20 A. -- storage devices, yes.
 21 Q. Okay. Before sending all of these storage
 22 devices to the plaintiffs' lawyers in
 23 response to the subpoena you received, did
 24 you alter any of the -- the contents of the
 25 storage devices?

18

1 A. No.
 2 Q. Okay.
 3 A. No.
 4 Q. Did you -- did you delete any files that were
 5 on any of the storage devices?
 6 A. No. I was careful not to add or take
 7 anything away.
 8 Q. Did you modify any of the files in any way?
 9 A. No.
 10 Q. Okay. You didn't make any changes at all to
 11 any of the files --
 12 A. None.
 13 Q. -- on the storage devices? You have to --
 14 A. I'm sorry.
 15 Q. Yeah. You -- you -- I'll just start over
 16 again so we have a clean record.
 17 A. Yes.
 18 Q. So you -- you did not make any changes to any
 19 of the files or data on these storage devices
 20 before sending them to the plaintiffs'
 21 lawyers in response to the subpoena?
 22 A. That's correct. I did not.
 23 Q. Okay. You can put that to the side. So now
 24 I have some -- some pretty basic questions
 25 about where you got the devices from. Is

19

1 that okay?
 2 A. Yes.
 3 Q. Okay. Great. So, first, can you please tell
 4 me just the month and the year when you got
 5 these devices.
 6 A. October 2018.
 7 Q. Okay. And next could you please tell me just
 8 where specifically did you get the devices
 9 from, just the physical location for
 10 starters?
 11 A. The apartment where my recently deceased
 12 father lived with my mother at Springmoor.
 13 Q. Okay. And what is Springmoor?
 14 A. Springmoor is a retirement community.
 15 Q. Okay. And your father and mother had been
 16 living in this apartment in Springmoor before
 17 his -- his death; is that right?
 18 A. That's correct.
 19 Q. Okay. And at the time you got these files
 20 from the Springmoor apartment in October
 21 2018, was your mother living there at the
 22 time?
 23 A. Yes, she was.
 24 Q. Okay. Before getting the devices from the
 25 apartment in Springmoor, did you ask your

20

1 mother if it was okay to take them?
 2 A. Yes, I did.
 3 Q. Okay. And did you ask her that in October
 4 2018?
 5 A. Yes, that -- that same day.
 6 Q. Okay. Did your mother object to you taking
 7 the devices?
 8 A. No, she didn't.
 9 Q. Okay. Did -- did -- did she say it was okay
 10 to take the devices?
 11 A. Yes. She encouraged me to.
 12 Q. Okay. So now I'm -- I'm going to back and --
 13 and ask a few more questions just to fill in
 14 some additional details about when and where
 15 you got the devices, okay?
 16 A. Yes.
 17 Q. Okay. When did you first learn that your
 18 father had died?
 19 A. September 30th, 2018.
 20 Q. Okay. And when you -- when you learned of
 21 his death -- and -- and I'll say for the
 22 record, I'm -- I'm sorry for your -- for the
 23 loss.
 24 When you learned of your father's death,
 25 did you contact your mother?

21

1 A. Yes.
 2 Q. Did -- did you go to visit her then?
 3 A. Yes.
 4 Q. Okay. And -- and did you go to visit her in
 5 Raleigh at the Springmoor apartment in
 6 October 2018?
 7 A. Yes, I did.
 8 Q. And at that time when you were there at the
 9 Springmoor apartment in Raleigh in October
 10 2018 visiting your mother, did -- did you
 11 go -- did you and your mother go through some
 12 of your father's things?
 13 A. There wasn't much to go through. Most of
 14 what there even was in there was what was
 15 left out, really. There were a couple of
 16 desk drawers. I -- there were a couple of
 17 keepsakes of mine that I was looking for, but
 18 one of the main reasons that I was looking
 19 was because when I walked in the door to his
 20 room, immediately I saw a keepsake of mine
 21 from my childhood, a -- a jewelry box that I
 22 had and that I had left in -- in my parents'
 23 care. And inside of it -- it was displayed
 24 prominently right under the flag that he was
 25 buried with and -- well, not with but the

22

1 flag that draped his coffin and a picture of
 2 my grandparents and inside the box was
 3 everything exactly as I had left it. So I
 4 took that to mean that I was supposed to look
 5 for other things and so I started -- I -- I
 6 thought there was a chance that there might
 7 have been something specifically for me as in
 8 a note or a message of some sort that I would
 9 find.
 10 Q. Okay. And -- and was that when you found the
 11 storage devices that we've been discussing?
 12 A. It was in that same incident, yes, that --
 13 that same evening.
 14 Q. Okay. And where in the apartment were the
 15 storage devices?
 16 A. They were on a shelf in my father's room.
 17 Q. Okay. Were they just sitting out open on the
 18 shelf?
 19 A. Yes, they were. There was a bag -- a clear
 20 plastic bag with the thumb drives and
 21 ad-sticks and then there was just a stack
 22 of -- it wasn't the only thing on the shelf.
 23 He had also some of those pullout boxes that
 24 kind of are like drawers that had some of his
 25 papers in there, and the -- the hard drives

23

1 just were there in the corner of -- it was
 2 a -- one of those kind of box-style book
 3 shelves. It wasn't just a straight shelf.
 4 Some of them had those removable drawers in
 5 them and others were just open.
 6 Q. Okay. But all of the four external hard
 7 drives and the 18 thumb drives that you sent
 8 to the plaintiffs' lawyers in response to the
 9 subpoena were on this bookshelf in your
 10 father's room in the apartment at Springmoor?
 11 A. That's right.
 12 Q. Okay. And -- and they weren't in any sort of
 13 safe or lockbox; they were -- they were just
 14 out?
 15 A. That's right.
 16 Q. Okay. Had you seen any of these storage
 17 devices before?
 18 A. Inasmuch as I could say later having looked
 19 at them and when they were done, then I was
 20 able to confirm that, yes, there were a
 21 couple of those that I recognized from when I
 22 was either staying with on short trips or
 23 living with my parents in their house in
 24 Alexandria, Virginia.
 25 Q. Okay. And -- and could you just tell me

24

1 briefly how -- how did you recognize -- what
 2 was the connection that you made to these
 3 storage devices?
 4 A. The -- one of them had that blue rubber
 5 lining around it that I recognized
 6 immediately, and I know that there could be
 7 more than one and I also know it's a
 8 removable cover, so -- but then it just -- it
 9 appeared to be really what I -- what I was
 10 looking for, really.
 11 Q. And after getting the storage devices, when
 12 did you ask your mother if it was okay to
 13 take them?
 14 A. When I noticed them, it was in a survey and
 15 I'd first come in and -- and I was a little
 16 overwhelmed with emotion when I first walked
 17 into my father's room. Excuse me. So, you
 18 know, I was sort of looking around. There
 19 was heirloom furniture all around the
 20 apartment and other -- other things that
 21 belonged to my extended family, my, you know,
 22 great-grandparents and such, so I -- I sort
 23 of took the whole thing in, had another sort
 24 of, you know, casual, brief conversation with
 25 my mother about how things had unfolded, and

25

1 it was later when I was back in there and I
 2 also said, this is -- I think he wanted me to
 3 have this jewelry box. And so I said, I'm
 4 going to take that. Is that okay? And she
 5 said, of course. And I said, I'm going to
 6 take these, too. I think that I'll find the
 7 pictures and some of the things that I'm
 8 looking for on -- on these. Can I take
 9 these? And she said, absolutely. She -- she
 10 said, I don't even know how to use them.
 11 Q. Okay. Do you know if anyone else other than
 12 you had been to your parents' apartment at
 13 Springmoor to -- to look through or -- or
 14 potentially take any of your father's things
 15 before you had gotten there?
 16 A. That was my understanding because before I
 17 took any of those things, I specifically
 18 asked my mother -- I said, he had a work
 19 laptop still, yes? She said, yes. And she
 20 said, and a work computer. And I said, okay,
 21 did Dale come and take that stuff? She said,
 22 yes, Dale took the laptop, Dale took the work
 23 computer, and Dale took everything that he
 24 wanted.
 25 Q. And -- and who is Dale?

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1 A. Dalton Lamar Oldham. That was my father's
 2 business partner, attorney. Together he and
 3 my father were Geographic Strategies.
 4 Q. Okay. And -- and you understood your mother
 5 to be telling you that Mr. Oldham had come to
 6 the apartment in Springmoor after your
 7 father's death and taken -- is -- was it a
 8 laptop and a desktop computer?
 9 A. Yes. And, again, it was a -- it wasn't clear
 10 exactly how much had -- he had taken as my
 11 father was dying that he had -- that my
 12 father had said to him, take this. I don't
 13 think my mother really remembers exactly what
 14 was there before and -- shortly before and
 15 then shortly after his -- his death.
 16 Q. Okay. Great. Thank you. Okay. So now I
 17 have some questions just about what you did
 18 after getting the devices, okay?
 19 A. Uh-huh.
 20 Q. Great. So after getting the devices from
 21 your parents' apartment in Springmoor, did
 22 you consistently hold on to them until you
 23 sent them to the plaintiffs' lawyers in
 24 response to the subpoena?
 25 A. Yes.

27

1 Q. Okay. You didn't give them to anyone else
 2 for any period of time in there?
 3 A. No.
 4 Q. Okay.
 5 A. I'm sorry I laugh. It's just I was so
 6 thrilled to have some of this precious data
 7 of mine that I would not let anyone else near
 8 them.
 9 Q. Great. And did -- did you stay in Raleigh
 10 then or did -- did you eventually go back to
 11 Kentucky?
 12 A. I stayed in Raleigh for a few days that time
 13 and then I went back to Kentucky.
 14 Q. Okay. And -- and did you take the storage
 15 devices with you when you went back to
 16 Kentucky?
 17 A. Yes, I did.
 18 Q. Okay. And were you then able to look at any
 19 of the -- the actual contents of the devices?
 20 A. I looked at the content of some of them that
 21 first night in my hotel room in Raleigh.
 22 Q. Oh, okay. And did -- am I -- did you -- you
 23 connected them to a computer to be able to
 24 look at them?
 25 A. Yes. Yes. I had a -- I had -- I had a

28

1 laptop with me that I use. I had found a --
 2 an appropriate cable in one -- one of my
 3 father's drawers I found a whole box of
 4 cables and one of them was the proper adapter
 5 for that -- for those external hard drives.
 6 Q. Okay. And -- and when you -- when you did
 7 connect some of the -- the storage devices to
 8 the computer to be able to look at the
 9 contents, did -- did you see any personal
 10 information in there like photographs or
 11 other personal information?
 12 A. Yes. I found specifically really what I was
 13 looking for, which were files of mine that I
 14 had -- essentially I backed them up onto my
 15 parents' computer when I was visiting them
 16 last and, actually, many times before that as
 17 I felt that it was a really good way to
 18 assure that they would be preserved because I
 19 knew that my father was not -- you know, I
 20 knew he had a tendency to -- to be, you know,
 21 careful about those things -- those kinds of
 22 things. And, yes, I found a great many
 23 photographs that I was looking for of my
 24 children and other documents that were
 25 related to my life, matters that concerned me

29

1 and my children, and it was -- it was -- I
 2 felt, well, I buried this treasure and that I
 3 was getting to dig it up. I was really very
 4 excited to see those pictures again,
 5 pictures -- also some pictures of my -- of my
 6 great-grandparents and things like that that
 7 I had hoped that I would find copies of as
 8 well.
 9 Q. Got it. So -- so some of these photographs
 10 and other personal materials were things that
 11 you yourself had stored on your parents'
 12 computer years earlier when your father was
 13 still alive; is that correct?
 14 A. That's correct.
 15 Q. Okay. And -- and you -- you saw some of
 16 those materials on these storage devices?
 17 A. Yes.
 18 Q. Okay. Other than personal files like
 19 photographs, letters, et cetera, did you see
 20 data or files on the storage devices re- --
 21 that related to your father's work creating
 22 maps?
 23 A. Yes, I did.
 24 Q. Okay. And I think I asked this before, but
 25 I'll just ask it again. Before sending the

30

1 storage devices to the plaintiffs' lawyers in
 2 this case in response to the subpoena, did
 3 you change or manipulate any of the files on
 4 the storage devices that related to your
 5 father's work?
 6 A. No, I did not.
 7 Q. Okay. Am I right that at some point after
 8 getting the storage devices, you contacted
 9 someone at the organization Common Cause; is
 10 that right?
 11 A. Yes.
 12 Q. Okay. And do -- do you remember the specific
 13 person who you first contacted at Common
 14 Cause?
 15 A. I first reached out to Bob Phillips, the
 16 director, and it was in hopes that he might
 17 be able -- he and Common Cause might be able
 18 to give me a referral to find an attorney for
 19 my mother.
 20 Q. Okay. And in the course of those discussions
 21 with Mr. Phillips, did you -- did you discuss
 22 these storage devices?
 23 A. Not in that conversation, no.
 24 Q. Okay. Did Mr. Phillips connect you to
 25 someone else at Common Cause?

31

1 A. Yes.
 2 Q. Okay. And who was that?
 3 A. Jane Pinsky.
 4 Q. Did you then have discussions with
 5 Ms. Pinsky?
 6 A. Yes, I did.
 7 Q. Okay. And in the course of those discussions
 8 with Ms. Pinsky did you mention the storage
 9 devices that we've been discussing?
 10 A. Yes, I did.
 11 Q. Okay. And did -- did you offer to -- to
 12 provide the devices to Ms. Pinsky and Common
 13 Cause?
 14 A. You know, when I first brought it up it was
 15 really just kind of an anecdotal reference to
 16 a interview with David Daley that I had
 17 recently read. At the end of this interview
 18 his last statement, and it was really the --
 19 the gist of it was about the fact that the
 20 rejected districts had been sent for redraw
 21 back to my father and now he was deceased and
 22 the comment that David Daley made was, I
 23 wonder -- I -- I think that somewhere out
 24 there on a hard drive there's a gift for the
 25 state legislators.

32

1 Q. I see. And -- and am I right, Mr. Daley is a
 2 journalist, an author who covers
 3 redistricting issues?
 4 A. Yes. He --
 5 Q. Okay.
 6 A. He sort of brought it to a little bit more
 7 mainstream attention by, I don't know, making
 8 it a little more personal, personable maybe
 9 even.
 10 Q. Got it. And -- and the article that you had
 11 read by Mr. Daley was one that was discussing
 12 the -- the redraw of North Carolina's
 13 legislative districts?
 14 A. Specifically, yes. Yes. That was the first
 15 time -- I did not even know that -- I was
 16 aware of Mr. Daley's book about Operation Red
 17 Map, but I was not aware that he was actually
 18 from North Carolina and would have such a
 19 specific interest in this for that reason.
 20 Q. Got it. So -- so in these discussions with
 21 Ms. Pinsky, having read Mr. Daley's article,
 22 am I right that you -- you expressed to
 23 Ms. Pinsky that you wanted to provide the
 24 storage devices to her and to Common Cause?
 25 A. Well, I -- I sim- --

33

1 THE WITNESS: Pardon?
 2 MR. SPARKS: I just want you to let him
 3 finish.
 4 A. Oh, I'm sorry.
 5 Q. Yeah. Go ahead.
 6 A. I -- I -- I simply quipped that, I have -- I
 7 have some hard drives. And we continued the
 8 discussion about that. At that time I was
 9 not aware that there was -- that one of the
 10 matters was not an appeal. I -- I was under
 11 the impression that all of the matters
 12 pending were appeals, therefore, no new
 13 evidence. I -- when I first mentioned these
 14 things, it was really from a journalistic
 15 point of view and more anecdotal. I did not
 16 presume that they had any value as
 17 evidence --
 18 Q. I see. And --
 19 A. -- per se.
 20 Q. -- did Ms. Pinsky explain to you that there
 21 is, in fact, a lawsuit relating to North
 22 Carolina's legislative districts that -- that
 23 is not on appeal yet, that is still in the
 24 trial phase?
 25 A. She did explain. I think the way she put

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1 it -- because we were discussing whether
 2 there was new evidence or no new evidence,
 3 errors of law only. So she mentioned that
 4 the case of the state legislative districts
 5 would be accepting new evidence and I said,
 6 well, I think this might be pertinent. And I
 7 didn't know if it was -- I said -- even at
 8 that time I said that I was skeptical that
 9 there was anything here that was not already
 10 disclosed after all of those. I recall
 11 personally discovery and discovery and
 12 discovery and discovery and a lot of
 13 grumbling because everyone always grumbles
 14 about discovery in civil litigation. That's
 15 my experience.
 16 Q. So when you say that this is pertinent, you
 17 mean you believed that the storage devices
 18 that you had gotten from your parents'
 19 apartment in Springmoor had files or evidence
 20 that were pertinent or relevant to -- to this
 21 litigation?
 22 A. Well, in that they -- they were clearly about
 23 redistricting and they were clearly labeled,
 24 North Carolina.
 25 Q. Excellent. After speaking to Ms. Pinsky

35

1 about the devices, did she put you in touch
 2 then with the plaintiffs' lawyers in this
 3 case?
 4 A. Yes. And I wanted to clarify. This -- the
 5 conversation about these hard drives did not
 6 come up in the first of my conversations with
 7 Ms. Pinsky. That was a development later on
 8 when we were discussing how I was very
 9 frustrated about what was -- what was going
 10 on and -- with -- with my mother and I
 11 commented -- that's -- that's -- that's
 12 right. I commented on the progress that
 13 Common Cause had made with their assertions
 14 about the relative fairness of partisan
 15 redistricting and also the underlying issues
 16 that -- that sometimes are disguised, in my
 17 opinion, as simply partisan. And I sort of
 18 made that comment. I said, this is -- this
 19 is the furthest I've ever seen a plaintiff
 20 get with anything that my father drew, and I
 21 will say I also said, and the way I knew my
 22 father a decade ago, he would have looked at
 23 those maps and -- and laughed.
 24 Q. So am I understanding correctly that when you
 25 originally contacted Bob Phillips at Common

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1 Cause and then in your initial discussions
 2 with Jane Pinsky, you were not contacting
 3 them principally about these storage devices?
 4 A. No, I was not.
 5 Q. Okay. Okay. Did you say you were -- you
 6 were contacting them in hopes that Common
 7 Cause would be able to help refer you to a
 8 lawyer in connection with your -- with your
 9 mother's situation?
 10 A. Yes.
 11 MR. SPARKS: Objection.
 12 MS. SCULLY: Objection to form,
 13 mischaracterizes the witness's testimony.
 14 A. I -- I know enough about litigation and
 15 attorneys because I'm a Hofeller. I knew
 16 that bias would come into play whether or not
 17 it was admitted. My father was often
 18 concerned that he would be discriminated
 19 against for his political position and took
 20 care to know the allegiance of someone he
 21 chose to represent him. I was not familiar
 22 with this town. I did not know -- I knew
 23 that -- many of the parties that were
 24 involved in the litigation surrounding my
 25 mother. I knew they had significant

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1 allegiances here and I felt that the only
 2 party in Raleigh that would both believe me
 3 that politics was an element and would know
 4 who might be actually independent counsel for
 5 my mother --
 6 Q. Okay. And am I right that the -- the lawyer
 7 you were seeking for your mother was in
 8 connection with the incompetency proceeding?
 9 A. Correct.
 10 Q. Okay. Let's go -- go back. After you
 11 discussed the storage devices with Ms. Pinsky
 12 at Common Cause, am I right that Ms. Pinsky
 13 then connected you directly with the
 14 plaintiffs' lawyers in this case?
 15 A. That's correct.
 16 Q. Okay. And is that Mr. Speas and Ms. Mackie?
 17 A. Yes.
 18 Q. Okay. Great. And did you -- did you have
 19 conversations with them then?
 20 A. Yes.
 21 Q. Okay. And in the course of those
 22 conversations did you -- did you express that
 23 you wanted to provide the storage devices
 24 that you had gotten from the apartment in
 25 Springmoor to them?

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1 A. Yes.
 2 Q. Okay. Then in February of -- of 2019 did you
 3 receive the subpoena from plaintiffs and
 4 that's when you sent the storage devices?
 5 A. Yes.
 6 Q. Okay. Did you tell anyone that you object to
 7 the subpoena or that you object to providing
 8 a response to the subpoena?
 9 A. No.
 10 Q. Okay. Did you, in fact, have any objection
 11 or problem with the subpoena or with
 12 providing a response to the subpoena?
 13 A. No, I didn't.
 14 Q. Okay. Did anyone else tell you that they
 15 object to the subpoena?
 16 A. No.
 17 Q. Did anyone else tell you that they had any
 18 objection or problem with you providing a
 19 response to the subpoena?
 20 A. No.
 21 Q. Did you -- did you ever speak to your mother
 22 about the subpoena?
 23 A. Yes, I did.
 24 Q. Okay. And did you tell her that you were
 25 going to respond to the subpoena?

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1 A. Yes. And because there were files that
 2 belonged to her, I asked for her permission
 3 also. I said -- she said that she had no
 4 problem with that. She also felt, as I did,
 5 that the process would most likely be
 6 centered around provably pertinent files
 7 anyway, but that -- I -- I reassured her -- I
 8 assured her, I should say, that she should be
 9 aware that once you -- and, again, this is
 10 something my father taught me. Once you let
 11 go of it, you don't have control of it
 12 anymore so you can't be guaranteed what will
 13 and won't be disclosed, so it's something you
 14 should be prepared for when you are involved
 15 with discovery.
 16 Q. Okay. And in the course of that discussion
 17 with your mother, did you understand that
 18 your mother was giving you permission or her
 19 okay to --
 20 A. Yes.
 21 Q. -- to -- let me -- let me finish the
 22 question.
 23 A. I'm sorry.
 24 Q. That's okay. I'll just -- I'm just going to
 25 ask it again, okay?

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1 A. (Nods head).
 2 Q. So in the course of that discussion with your
 3 mother about the subpoena, did you understand
 4 that she was giving you her permission or her
 5 okay to provide the storage devices that
 6 we've discussed to the plaintiffs' lawyers in
 7 response to the subpoena?
 8 A. Yes.
 9 Q. Okay. Thank you. Okay. I just have a -- a
 10 few other questions and I -- I did want to
 11 ask you just a couple of questions about your
 12 relationship with each of your parents. And
 13 I -- and I don't intend to pry, but -- but
 14 I'll just ask a couple of basic questions if
 15 that's okay.
 16 A. That is okay, yes.
 17 Q. Okay. Would -- would you say that you had a
 18 positive relationship with your father in
 19 recent years?
 20 A. Not in recent years, no.
 21 Q. Okay. When was the last time you spoke to
 22 your father before his death last year?
 23 A. July of 2014.
 24 Q. Okay. Would you say that you have a positive
 25 relationship, a functional relationship, with

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1 your mother?
 2 A. Yes.
 3 Q. Okay. Do you know whether an official estate
 4 was opened for your father after his death?
 5 A. No. That has been a confused issue.
 6 Q. Okay. So when you say no, you --
 7 A. I --
 8 Q. -- the answer is, no, you don't know?
 9 A. Exactly.
 10 Q. Okay. That's fine. Did you send these
 11 storage devices to the plaintiffs' lawyers in
 12 this case to -- to get back at your father or
 13 to spite your father for personal reasons?
 14 A. Not at all.
 15 Q. Okay. Could you just tell me briefly in your
 16 words, why did you want to provide these
 17 devices to the plaintiffs' lawyers in this
 18 case?
 19 A. When I was expressing my skepticism that
 20 there would be anything in the way of
 21 evidence, I stated that I felt that these
 22 files would if -- certainly be of historical
 23 value, that they would give insight into the
 24 process, not any value judgment on that
 25 process. I did not have -- my political

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1 viewpoint to me seemed irrelevant to the
 2 function of census data turning into voting
 3 districts, and I really thought of it in --
 4 in those terms. I really -- I knew that if I
 5 presented them this way that they would be
 6 preserved, that they -- their integrity would
 7 be preserved and everything there, including
 8 my files, including other matters completely
 9 unrelated to this, that those -- that that
 10 would be a snapshot in time.
 11 Q. Was -- was there any financial benefit to you
 12 personally from providing these files to the
 13 plaintiffs' lawyers? Did you -- did you make
 14 any profit here?
 15 A. No.
 16 Q. Okay.
 17 MR. JONES: Can we go off the record,
 18 take a five-minute break?
 19 THE WITNESS: Sounds great.
 20 THE VIDEOGRAPHER: Going off the
 21 record. The time is 10:24 a.m.
 22 (Whereupon, there was a recess in the
 23 proceedings from 10:24 a.m. to 10:46 a.m.)
 24 THE VIDEOGRAPHER: Going back on the
 25 record. The time is 10:46 a.m.

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1 MR. JONES: Thank you. Ms. Hofeller, I
 2 have no more questions for you today. Thank
 3 you for your time.
 4 THE WITNESS: My pleasure.
 5 EXAMINATION
 6 BY MS. SCULLY:
 7 Q. Ms. Hofeller, Elizabeth Scully. We met
 8 earlier this morning. I represent the
 9 legislative defendants in this case and I do
 10 have some follow-up questions that I would
 11 like to ask of you today.
 12 First, if I could turn your attention to
 13 the document that was marked as Exhibit 2
 14 that you went through with counsel for the
 15 plaintiffs earlier. Looking at -- at the --
 16 at the first page where there's a photograph
 17 of a -- of a box and then appears to be
 18 handwriting for -- addressed to Arnold &
 19 Porter.
 20 Do you see that there?
 21 A. I see the handwriting behind the box.
 22 Q. Uh-huh.
 23 A. Yes.
 24 Q. Is that your handwriting?
 25 A. No.

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1 Q. No. Do you know whose handwriting that is?
 2 A. No.
 3 Q. Did you personally prepare the box, label it,
 4 put the contents in the box and send it to
 5 Arnold & Porter?
 6 A. I put the contents in the box, I sealed the
 7 box, and at the FedEx office the label was
 8 printed out and put on it in front of me.
 9 Q. Okay. Did you send the materials directly to
 10 Arnold & Porter or to a vendor before you
 11 sent them to Arnold & Porter?
 12 A. I sent them directly to Arnold Porter.
 13 Q. Did you ever send the materials to a -- a
 14 vendor?
 15 A. No.
 16 Q. Turning to the -- it's marked Number 4 in
 17 Exhibit Number 2.
 18 A. Okay.
 19 Q. You have that in front of you?
 20 A. I do.
 21 Q. And it appears on Page Number 4 of Exhibit
 22 Number 2 is a picture of a thumb drive. Do
 23 you see that?
 24 A. I do.
 25 Q. And on that thumb drive there are some

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1 drawing -- a handwritten drawing on that
 2 thumb drive. Do you recall what material was
 3 contained in this thumb drive?
 4 A. Are -- are you -- please clarify the -- the
 5 handwriting being the A as opposed to the
 6 label on the drive, which is etched into the
 7 metal, I believe.
 8 Q. Well, let me -- let me back up and ask you
 9 this: Do you know -- on this document on the
 10 fourth page there appears to be two
 11 photographs. Both appear to reflect a thumb
 12 drive. Do you know if these are two
 13 different thumb drives or one thumb drive?
 14 A. I believe that is the two opposite sides of
 15 the same thumb drive.
 16 Q. Do you know that for a fact or is that
 17 just -- you're making an assumption?
 18 A. I am making an assumption.
 19 Q. Do you know if you in -- if you ever reviewed
 20 the information that was on this thumb drive
 21 that appears on Page 4 of Exhibit Number 2
 22 that you sent to Arnold & Porter?
 23 A. I know that I reviewed all of the drives that
 24 I sent to -- to Arnold Porter. I do not
 25 recall what was on which storage device.

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1 Q. Did you review all of the drives that you
 2 sent to Arnold & Porter during the same day?
 3 A. Yes. Yes. Maybe perhaps I had to take a
 4 break overnight, but it was -- I -- I made
 5 sure that I was not including anything that
 6 was mine that wasn't, you know, related to
 7 this at all, that I hadn't mistakenly mixed
 8 anything in, that these were all just the
 9 files and things that had come from my
 10 father's apartment. So that -- that's about
 11 the extent of it.
 12 Q. So if I understand you, if you found
 13 materials on the -- in any of these thumb
 14 drives or drives that you thought were yours
 15 or your personal information, you removed
 16 that information before you sent it to
 17 Arnold & Porter?
 18 A. No.
 19 MR. JONES: Objection. That
 20 mischar --
 21 THE WITNESS: Oh, I'm sorry.
 22 MR. JONES: -- mischaracterizes the
 23 testimony.
 24 MS. SCULLY: I -- I believe --
 25 MR. FARR: He asked -- she asked the

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1 question so she can answer it.
 2 MR. SPEAS: Tom, how many people are
 3 representing your side in this deposition?
 4 MR. FARR: Three.
 5 BY MS. SCULLY:
 6 Q. I believe you testified earlier that when you
 7 looked through the materials you took from
 8 your father's room that you did find
 9 information on those electronic files that
 10 were personal to you, correct?
 11 A. That is correct.
 12 Q. Did you produce that personal information
 13 when you sent the electronic materials to
 14 Arnold & Porter?
 15 A. Yes, I did.
 16 Q. A moment ago when you said you looked through
 17 the electronic files before you produced them
 18 to Arnold & Porter to make sure that nothing
 19 that related only to you or that wasn't
 20 relevant -- you wanted to make sure that
 21 wasn't being produced, what did you mean by
 22 that?
 23 A. That wasn't what I said. What I said is I
 24 checked them to make sure that they were my
 25 father's, that I hadn't mistakenly grabbed

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1 something from my own room, a storage device
 2 that I would keep, use with my phone, with my
 3 laptop, completely unrelated to this, never
 4 having been touched by my father. That's
 5 what I meant.

6 Q. Okay. Thank you for that clarification. How
 7 many hours did it take you to go through and
 8 review the entire contents of the materials
 9 that you provided to Arnold & Porter?

10 A. And please -- I would like to clarify that I
 11 did not open every file. I merely observed
 12 that this was the media that I thought it was
 13 when I arrived at my home. So it was, oh,
 14 two, three hours, I think, making sure. Some
 15 of them, you know, I -- they didn't light up
 16 at first. I had to put them in the other USB
 17 drive, reseat the connectors. Some -- some
 18 of them took -- some of them were slower than
 19 others to open, but I would say that I had
 20 made sure that -- done that last check before
 21 putting it in the mail that I knew what I was
 22 sending and that it was all what I was
 23 asserting it was, and I think that process
 24 took, yeah, maybe about two or three hours.

25 Q. Do you know how many files you opened during

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1 those two to three hours?

2 A. During those two to three hours I didn't open
 3 any of the files. I merely looked in the
 4 basic root folders on each to confirm what it
 5 was and that it had belonged to my father
 6 really was the point. The files on all of
 7 these that were mine specifically as in
 8 photographs I took, letters I wrote, those I
 9 had looked at early on. My interest in these
 10 drives initially was only for those. I
 11 ignored everything else for a period of time.

12 Q. When you took these files from your father's
 13 room and spoke to your mother about it,
 14 you -- in that conversation with your mother
 15 you told her you were taking the files
 16 because you wanted to look through the files
 17 to find personal things related to you,
 18 photographs that may be on the files,
 19 correct?

20 A. That's correct.

21 Q. And with that understanding your mother gave
 22 you permission to take the files, correct?

23 A. I did not feel that my mother's permission
 24 for me to have these was conditional on
 25 anything. When she gave me permission to

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1 take them, it was -- maybe I mentioned that I
 2 was excited about the possibility that there
 3 would be pictures of my children, but she
 4 said, they're yours. Take them. I don't
 5 have any use for them.

6 Q. And when you had that initial conversation
 7 with your mother, you had no discussions with
 8 her and expressed no interest in looking
 9 through to find any of your father's business
 10 records or materials he may have created in
 11 connection with his work as -- as an expert
 12 in other litigations, correct?

13 A. Correct. As a matter of fact, I went to the
 14 point of making sure that I asked my mother
 15 that all of his specifically work-related
 16 material had already been collected. I
 17 didn't wish to assert myself in -- in --
 18 in -- into the business intentionally.

19 Q. At some point you say when you were -- well,
 20 when you first took the -- the files, did
 21 you -- you didn't know what was on these
 22 files when you first took them, correct?

23 A. Some of them I didn't. The backups that I
 24 recognized from my parents' home PC back in
 25 Alexandria -- I was at least vaguely familiar

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1 with what had been on my parents' home PC
 2 when I was there, so those were pretty much
 3 as I expected them. And then I -- my thought
 4 was that I would at least look at everything
 5 and see what it was.

6 Q. Now, you said you went to your mother's home.
 7 It was sometime in October 2018. Do you know
 8 specifically when you were -- went to your
 9 mother's home and took these files?

10 A. October 11th.

11 Q. And how do you know it was October 11th?

12 A. I have had to recount the details of my
 13 arrival at my mother's house several times
 14 over the past few months, so it's become
 15 pretty -- pretty normal.

16 Q. Do you have any documents that reflect when
 17 you were in North Carolina?

18 A. Documents. I don't think so, no.

19 Q. Did you go to any restaurants, make any
 20 credit card charges, purchase gasoline near
 21 your mother's apartment, any type of document
 22 that would indicate the time period when you
 23 were visiting with your mother?

24 A. I believe that receipts would reflect that I
 25 was in Raleigh during certain days.

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1 Q. How long did you stay -- did you stay with
 2 your mother at that time?
 3 A. Not at that time. At that time I stayed in a
 4 hotel and I stayed for, I believe, around
 5 four days. I think -- I don't honestly
 6 recall off the top of my head if it was three
 7 nights or four nights.
 8 Q. Was the hotel located in Raleigh?
 9 A. Yes.
 10 Q. What was the name of the hotel where you
 11 stayed?
 12 A. I stayed one night in a hotel, the name of
 13 which I don't recall because I didn't like
 14 it. So then I moved to the La Quinta, I
 15 believe, yes --
 16 Q. And how --
 17 A. -- near Crabtree.
 18 Q. And how did you pay for your stay at the
 19 La Quinta?
 20 A. I paid -- I think the first night I paid cash
 21 and the next night I paid with my debit card.
 22 Q. And you get monthly statements of your debit
 23 card?
 24 A. I think I've gone paperless.
 25 Q. Do you receive e-mails of -- notification of

1 your debit card statement --
 2 A. Yes.
 3 Q. -- when it's available?
 4 A. Yes.
 5 Q. And your debit card is held with what bank?
 6 A. PNC.
 7 Q. After you took the materials from -- from
 8 your father's room, when did you first begin
 9 to look through the materials?
 10 A. That same evening.
 11 Q. When you stayed at the hotel that you don't
 12 recall the name of?
 13 A. Yes.
 14 Q. And how many -- well, did you review one
 15 device? How many devices did you review that
 16 night?
 17 A. That first night I stuck with the one because
 18 that's where I found hundreds of pictures of
 19 me with my infant children.
 20 Q. And was the one a thumb drive or was it a
 21 hard drive, if you remember?
 22 A. An external hard drive.
 23 Q. When looking through this one external hard
 24 drive on that first night, did you also find
 25 materials that appeared to be related to your

1 father's business work with his partner, Dale
 2 Oldham?
 3 A. I noticed, as was standard on my father's
 4 home PC, there would -- there was usually at
 5 least a folder related to his work. I was
 6 accustomed to not really paying much
 7 attention to the specifics. I talked to him
 8 about things. I didn't need to poke.
 9 Q. And when you noticed that there were folders
 10 on this hard drive that you reviewed related
 11 to your father's work and knowing that Dale
 12 Oldham had taken efforts to try to reclaim
 13 business records, did you go back and tell
 14 your mom, you know, we still have information
 15 related to Dad's work?
 16 A. My father always had information related to
 17 his work on the personal hard drive. It
 18 wasn't noteworthy.
 19 Q. Does that mean you did not go back and tell
 20 your mom that there was information related
 21 to his work on the hard drive that you had?
 22 A. At some point when I discussed the fact that
 23 they might be of interest to the case, I --
 24 again, with my mother there are some things
 25 because she's my mother that don't need to be

1 explicitly stated. She assumed that there
 2 would be at least some work-related material
 3 on the hard drive. I discussed with her the
 4 nature of this litigation and, again, such
 5 similar litigation was a regular fixture in
 6 my entire life living with my father. So the
 7 idea that there would be some litigation
 8 going on around things that he had drawn was
 9 just par for the course. So, yes, I don't
 10 know that I would have explicitly said,
 11 Mother, there are these kinds of files on
 12 this. It was more like, Common Cause may
 13 have an interest in these work files. And
 14 even I -- with her I even discussed my belief
 15 that this would not -- these all being
 16 backups, that this would not be any
 17 information that was not already known and
 18 had already been disclosed. There were files
 19 that were titled, Discovery, so I assumed
 20 that those had gone previously into
 21 discoveries that had already happened.
 22 Q. From your answer I'm still not clear whether
 23 you actually had a conversation with your
 24 mother about your father's business records
 25 that you discovered on the external hard

1 drives.
 2 Did you have a specific conversation
 3 with your mother to tell her that you
 4 identified business records of your father's
 5 on these external hard drives that you had
 6 taken possession of?
 7 MR. JONES: Objection, asked and
 8 answered.
 9 A. All of those points were at some point
 10 mentioned. My mother was aware of the fact
 11 that the interest -- the subpoena for these
 12 hard drives was, in fact, for work-related
 13 files only. So not only was it clear to her
 14 that there were work-related files, but it
 15 was clear to her that the lawyers that would
 16 be looking at it on either side would not be
 17 looking at anything other than my father's
 18 work-related files.
 19 Q. When did you first begin discussing with your
 20 mother the fact that Common Cause may have an
 21 interest in your father's work files?
 22 A. My -- wow. She and I were discussing the
 23 matter of this pressing issue of hers. Most
 24 of our discussions about Common Cause in
 25 those first two months were just about how

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1 nice it was that they had given us some
 2 referrals.
 3 Q. When you say your discussions in those first
 4 two months, you mean -- what -- what time
 5 period do you mean?
 6 A. That would have been October and November.
 7 Q. Of 2018?
 8 A. Correct. I'm sorry. Yes.
 9 Q. So October/November 2018 your discussions
 10 with your mother are focusing on the
 11 referral -- attorney referral you received
 12 for her and on the --
 13 A. And her case, really.
 14 Q. And her case?
 15 A. All of it as it may be related to the
 16 unfortunate politicizing of our family life.
 17 Q. And when you say her case, I believe you
 18 testified earlier that the case you're
 19 referring to was a petition to have your
 20 mother found incompetent, correct?
 21 A. Yes.
 22 Q. You are aware that there was an interim order
 23 entered and your mother had a guardian over
 24 her estate and over her person appointed,
 25 correct?

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1 A. I'm aware.
 2 Q. Do you know the time period in which that
 3 occurred?
 4 A. November. Early November.
 5 Q. October/November your conversations with your
 6 mom with respect to Common Cause are focused
 7 on how they'd helped her identify an
 8 attorney. Who was that attorney that they
 9 helped her identify?
 10 A. I was referred to Allan From, who explained
 11 that he didn't handle specifically those
 12 matters and referred us to Douglas Noreen.
 13 Q. At what point in time did you discuss with
 14 your mother the possibility of turning over
 15 your father's business records to Common
 16 Cause or to Arnold & Porter?
 17 A. The subpoena. That -- that would be when we
 18 specifically discussed that.
 19 Q. Did you --
 20 A. I think I might have quipped about that David
 21 Daley article way back in October when I was
 22 looking at those hard drives recalling that
 23 comment, somewhere out there on a hard drive.
 24 Q. Did you --
 25 A. I made a joke about that. I wasn't really,

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1 you know, saying, look at those hard drives.
 2 Well --
 3 Q. Did you have --
 4 A. Dale got all the good stuff. Sorry.
 5 Q. Did you have a conversation with your mother
 6 about the possibility of turning over your
 7 father's business records to Common Cause or
 8 Arnold & Porter before you received the
 9 subpoena?
 10 A. I think that I did -- the -- did -- she was
 11 also curious about the case and I had said
 12 that I was -- I think I shared with her on
 13 that moment when I -- when I realized --
 14 maybe around that same day when I realized
 15 that this wasn't strictly appeal, that --
 16 that there had been a new -- a new matter
 17 opened. And she never really was all that
 18 familiar with the details and, to be honest,
 19 I'm no expert on redistricting either. I
 20 really only felt that I was uniquely informed
 21 about my father as a person and perhaps his
 22 process, his -- his creative process, his --
 23 his political philosophy. Those kinds of
 24 things I felt that I was perhaps -- that I
 25 possessed some unique understanding of the

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1 man, but my mother was not -- my mother has a
 2 career of her own so her interest was really
 3 more incidental, just as much as anyone in --
 4 in -- in the public -- the general public
 5 might be interested in the political process.
 6 Q. You testified earlier that you understood
 7 your father had a business and a business
 8 partner, Dale Oldham, correct?
 9 A. Correct.
 10 Q. And you understood that your -- your father
 11 and Mr. Oldham in their business were
 12 retained and engaged as experts in
 13 litigations over the years, correct?
 14 A. That's correct.
 15 Q. You testified you're familiar with civil
 16 litigation earlier, correct?
 17 A. Yeah, and specifically with litigation on the
 18 matters of the concern of the people.
 19 Q. You understand that in connection with your
 20 father's work as an expert consultant that
 21 there are materials that he prepares as an
 22 expert that are privileged materials --
 23 MR. JONES: Ob- --
 24 BY MS. SCULLY:
 25 Q. -- materials that he prepares on behalf of

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1 the clients he's been retained to be an
 2 expert for, correct?
 3 MR. JONES: Objection, calls for a
 4 legal conclusion. The witness is not a
 5 lawyer.
 6 A. None of the materials were labeled
 7 privileged.
 8 Q. Do you have -- do you believe that you have
 9 the appropriate training or skills to
 10 determine whether the materials on your
 11 father's hard drives contained privileged
 12 information?
 13 A. All of the attorneys I've ever worked with if
 14 they were concerned about protecting
 15 privilege have pretty bold letters that said,
 16 the following contains privileged
 17 attorney-client communication and the
 18 proceeding contains privileged
 19 attorney-client communications. In that I
 20 can read when something says that it's
 21 privileged, I'm qualified. But, no, beyond
 22 that, I think if -- if -- if I just stumbled
 23 into a client's file, I would not be able to
 24 say which was and wasn't privileged, no.
 25 Q. You do not have a law degree, correct?

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1 A. That is absolutely correct.
 2 Q. You have no legal training, correct?
 3 A. No formal training.
 4 Q. You've never worked --
 5 A. Just on the street. I'm sorry.
 6 Q. You've never been employed or worked in a law
 7 firm, correct?
 8 A. I believe that I've done temp work as a
 9 receptionist for law firms but nothing --
 10 nothing noteworthy in that it would pad my
 11 CV.
 12 Q. You have never made any determinations or
 13 been asked by anyone to make any
 14 determinations about whether something is a
 15 privileged document or not, correct?
 16 A. No. That's correct. I mean, I have not been
 17 ever asked by anyone to do that, no.
 18 Q. Other than seeing a document marked as
 19 privileged, you have -- you've testified you
 20 don't know and haven't -- you don't have the
 21 skills to determine whether a document is a
 22 privileged document or not if it doesn't
 23 reflect privileged on the document itself?
 24 A. Well, you know, if it was civil litigation
 25 concerning personal matters, then I think I

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1 would assume privilege, but considering that
 2 this is a public matter and it's -- this is
 3 a -- this is a -- my understanding of -- of
 4 political philosophy and the founding of this
 5 republic is that this is -- this concerns the
 6 people and, therefore, I would probably err
 7 in the direction of it not being privileged
 8 if it weren't marked so, if that clarifies.
 9 Q. Prior to making the production of the
 10 electronic files that you made to Arnold &
 11 Porter in response to the subpoena marked as
 12 Exhibit 1, did you engage in any sort of
 13 review to determine whether the files that
 14 you were turning over contained privileged
 15 information?
 16 MR. JONES: I'll -- I'll object. It's
 17 ambiguous, the term privilege. There are
 18 lots of privileges.
 19 A. Also, I really was -- it had already been
 20 kind of clarified that the best way to
 21 preserve the integrity of this -- of this
 22 data would be not to pick and choose. There
 23 were personal files of mine on these hard
 24 drives and I left everything exactly as it
 25 was. I did not make decisions about what did

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1 and didn't go specifically for the purpose of
 2 a historical documentation of the complete
 3 media as it was when I found it.
 4 Q. You testified that it was clarified to you
 5 that the best way to preserve this data was
 6 not to go through and make any selection or
 7 remove anything from it, just to turn all of
 8 the materials over to Arnold & Porter,
 9 correct?
 10 MR. JONES: Objection. I think that
 11 mischaracterizes the testimony.
 12 BY MS. SCULLY:
 13 Q. You can answer the question.
 14 A. Could you ask it again?
 15 Q. You testified that it was clarified to you
 16 that the best way for you to preserve the
 17 integrity of this data was to just turn over
 18 the data in its entirety to Arnold & Porter
 19 and not to go through and pick and choose or
 20 remove anything from the data, correct?
 21 MR. JONES: I'll -- I'll object.
 22 It's --
 23 A. These are theoretical --
 24 MR. SPARKS: Hold on.
 25 MR. JONES: Hold on. Hold on. Let

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1 me --
 2 THE WITNESS: Sorry.
 3 MR. JONES: I have to state my
 4 objection. So I'll object because it
 5 mischaracterizes the testimony and the use of
 6 the passive voice makes it ambiguous.
 7 MR. SPARKS: Now you can answer.
 8 A. I don't think there are any -- I don't think
 9 there are any solid lines in this. I think
 10 that there was a -- a collective attempt to
 11 maintain accuracy, maintain transparency.
 12 Q. Who clarified that for you? When you said,
 13 it was clarified --
 14 A. It wasn't clar- --
 15 Q. -- for me --
 16 A. Okay.
 17 Q. -- who was that?
 18 MR. SPARKS: Hold on a second. Please
 19 let her finish.
 20 THE WITNESS: I'm sorry.
 21 MR. JONES: Yeah. I'll --
 22 MR. SPARKS: Thank you.
 23 MR. JONES: Go ahead and -- is the
 24 question done?
 25 MS. SCULLY: (Nods head).

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1 MR. JONES: Okay. I'll object because
 2 it misclar- -- characterizes the testimony.
 3 She has not testified that anyone clarified
 4 anything for her.
 5 A. Yeah. That's --
 6 Q. You may answer the question.
 7 A. That's -- I -- yes, I was going to say
 8 exactly that. I don't recall that -- that it
 9 was -- certainly if I said clarify -- in the
 10 discussion that I had with the attorneys
 11 Caroline Mackie and Eddie Speas, there was
 12 discussion on how it would be best recognized
 13 in court as -- as -- as a -- a good chain of
 14 custody, transparency. There would be no
 15 accusation of picking and choosing, of
 16 keeping some things secret and some things
 17 not if the media were turned over to a third
 18 party in its exact state.
 19 Q. Prior to turning over the hard drives and the
 20 thumb drives to Arnold & Porter did you ask
 21 your counsel to conduct -- well, let me ask
 22 this: Did you -- did you have representation
 23 at that point in time?
 24 A. I did not or did --
 25 THE WITNESS: Were we -- were you

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1 retained yet?
 2 A. I don't -- certainly not in this matter. No,
 3 I did -- I did not have counsel at that time
 4 I don't think.
 5 THE WITNESS: Or did I?
 6 A. I don't know. I wasn't consulting with an
 7 attorney on this matter.
 8 Q. I take it from --
 9 MR. SPARKS: Do you want me to
 10 interject anything here?
 11 MS. SCULLY: No, that's all right.
 12 BY MS. SCULLY:
 13 Q. I take it from your answer that you did not
 14 seek counsel from any attorney about whether
 15 there were concerns with respect to any
 16 privileged information that may be turned
 17 over to Arnold & Porter in response to the
 18 subpoena?
 19 MR. JONES: I'll -- I'll object. I
 20 think the question is asking about
 21 communications she may or may not have had
 22 between herself and one of her lawyers, which
 23 would be privileged.
 24 BY MS. SCULLY:
 25 Q. You testified a moment ago you didn't have

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1 counsel at that point in time. I'm just
 2 clarifying that you never sought any guidance
 3 from any attorney as to whether there was a
 4 concern about turning over privileged
 5 information from your father's business
 6 records to Arnold & Porter?
 7 MR. SPARKS: And I will object to that
 8 because if she did it --
 9 THE WITNESS: It would be privileged.
 10 MR. SPARKS: -- it would be
 11 attorney-client privileged.
 12 MR. JONES: Just answer it --
 13 instruct -- instruct her not -- you should
 14 instruct her not to answer.
 15 MR. SPARKS: And don't answer, please.
 16 BY MS. SCULLY:
 17 Q. I'll ask a more general question. Did you
 18 seek any counsel prior to producing the
 19 materials in response to Arnold & Porter's
 20 subpoena?
 21 MR. SPARKS: Same objection and please
 22 don't answer that.
 23 MR. FARR: Whether -- whether she
 24 talked to an attorney is privileged? Are you
 25 saying that?

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1 THE WITNESS: I think so.
 2 MR. SPARKS: I'm sorry. Ask the
 3 question again.
 4 MR. FARR: Whether she -- whether she
 5 talked to an attorney is privileged, just the
 6 fact that she talked to an attorney?
 7 MS. SCULLY: Just the general thing,
 8 not what -- specifically what was discussed.
 9 Did she speak with an attorney.
 10 MR. SPARKS: I'm -- I'm going to lodge
 11 the same objection, yes, and give the same
 12 instruction.
 13 BY MS. SCULLY:
 14 Q. You testified earlier that you understood
 15 that your father's business partner,
 16 Mr. Oldham, had taken steps to retrieve
 17 records related to their business, correct,
 18 retrieve one of your father's computers, yes?
 19 A. Two --
 20 Q. Two?
 21 A. -- of his computers.
 22 Q. When you realized that there was information
 23 related to your father's business contained
 24 on these hard drives and thumb drives, did
 25 you reach out to Mr. Oldham to let him know

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1 that you had possession of business records
 2 of theirs?
 3 A. There have been work files on my father's
 4 home PC since we had a home PC so, no, in
 5 that I asked -- there are other matters
 6 concerning contact. Dale isn't exactly easy
 7 to get ahold of, but I specifically -- I felt
 8 that I had pretty much covered that when I
 9 asked everyone involved that knew anything
 10 about my father and/or Dale if Dale had
 11 gotten everything he wanted and the answer
 12 was yes given the fact that some of those
 13 backups are from 2009, '10, '11, and that I
 14 was in many of those times living at home
 15 using that computer as my own and those files
 16 were there.
 17 Q. You said you asked everyone involved if Dale
 18 got everything he wanted and the answer was
 19 yes. Who is the everyone involved that you
 20 asked?
 21 A. The other person that I asked -- there are
 22 two other people that I asked other than my
 23 mother. I asked my uncle -- oh, and
 24 through -- I asked my cousin and I -- I sort
 25 of tried to establish that he had come and

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1 gone. That was when my mother explained that
 2 also when Dale left with the things that were
 3 related to Geographic Strategies before my
 4 father died, that my father had given him his
 5 half of the business, which amounted to
 6 around \$300,000.
 7 Q. Who was your uncle that you asked? What's
 8 his name?
 9 A. Chris Hartsough.
 10 Q. What was his relationship with Dale?
 11 A. There -- he did not have a relationship with
 12 Dale; rather, he had been present during my
 13 parents' move from their house in Raleigh to
 14 the retirement community in Raleigh. I was
 15 interested in this move because many of my
 16 personal possessions went missing at this
 17 time. That's my -- was my principle interest
 18 in finding out what had happened.
 19 Q. And who's your cousin that you spoke with?
 20 A. Trudy Harris.
 21 Q. Did she have a relationship with Dale?
 22 A. No. None of these people had a relationship
 23 with Dale. It's just that he had apparently
 24 been there during this longer period of time
 25 when my family was helping my parents move.

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1 That's all.

2 Q. If you wanted to know if Dale Oldham had

3 gotten everything that he wanted, why not ask

4 Mr. Oldham directly himself?

5 A. Because he was a part of the litigation that

6 was ongoing with my mother. He was a -- he

7 was an opposing party in that litigation and

8 noncommunicative before that point as well.

9 I did at -- at one point attempt to reach out

10 to him to discuss my mother, but he did not

11 return my calls and resisted all of my

12 attempts to -- to talk to him.

13 Q. When did you attempt to reach out to

14 Mr. Oldham to discuss your mother?

15 A. Twice, once during the first trip to Raleigh

16 and again in the second trip to Raleigh. Oh,

17 and then we sent him notice of -- of certain

18 documents -- family documents that bore his

19 name as those documents had been changed. He

20 got notice of that as well.

21 Q. The first trip to Raleigh, was that the trip

22 in October around -- on or about October

23 11th, 2018?

24 A. Yes.

25 Q. And when was the second trip?

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1 A. That would have been shortly after. Let's

2 see. The first trip was October -- okay. So

3 I -- I believe that I was then three or four

4 days back in Kentucky, but the situation

5 was -- was serious enough that I felt I had

6 to -- to change my plans to continue my work

7 in Kentucky and actually drop everything in

8 Kentucky and come back to Raleigh to help my

9 mother. That would be -- I think I was back

10 by the 18th.

11 Q. Prior to turning over the hard drives and the

12 thumb drives to Arnold & Porter, is it

13 correct that you never communicated with Dale

14 Oldham to let him know that materials related

15 to his business with your father were being

16 turned over?

17 A. Those were my father's files. I did not

18 assume that any of them or all of them --

19 many of them were there on that hard drive

20 before Geographic Strategies existed. There

21 were files related to my father's work that

22 were there from a time when I'm not even sure

23 that Dale knew my father. I did not really

24 think of this in terms of Dale Oldham, no. I

25 thought of this in terms of my dead father

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1 and his work in -- in public service, not so

2 much about -- about Dale, honestly.

3 Q. Is that, no, you did not communicate with

4 Dale Oldham before you turned over these

5 files to Arnold & Porter to let him know that

6 there were --

7 A. I did not make --

8 Q. -- records related to --

9 THE WITNESS: Yeah, I'm sorry.

10 BY MS. SCULLY:

11 Q. -- that there were records related to his

12 business with your father that were being

13 turned over in response to a subpoena?

14 MR. JONES: Objection, asked and

15 answered.

16 MR. SPARKS: Go ahead and answer.

17 A. I didn't attempt yet again to contact

18 Mr. Oldham in advance of responding to that

19 subpoena. No, I did not.

20 Q. Did you ever attempt to contact Mr. Oldham

21 and leave any substantive message for him

22 that you had possession of --

23 A. Of my father's stuff.

24 Q. -- business records --

25 A. I'm sorry.

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1 Q. -- of records related to your father and

2 Mr. Oldham's business and that you intended

3 to turn those records over to Arnold & Porter

4 and Common Cause?

5 MR. JONES: Objection, asked and

6 answered.

7 A. I didn't.

8 Q. Turning back to Exhibit Number 2. I believe

9 you testified that you -- sitting here today,

10 you do not know what specific information is

11 contained on the thumb drive that is pictured

12 on Page 4 of Exhibit 2, correct?

13 A. That's correct.

14 Q. If I could turn your attention to Page 7.

15 And is -- do you know what this device is

16 that appears on Page 7?

17 A. It appears to be an external drive.

18 Q. Do you know what the contents were of the --

19 this external drive that appears on Page 7?

20 A. I know that that's my father's handwriting on

21 that label. Beyond that, I don't know

22 offhand.

23 Q. Do you have any specific recollection of

24 reviewing the files that are contained on the

25 hard drive that appears on Page 7 of Exhibit

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1 2?
 2 A. Not specifically that one, no. None of them
 3 specifically. They all seem to have sort of
 4 a -- a mix -- a mixture of -- of different
 5 kinds of data on different matters. All of
 6 them were mingle -- mingled.
 7 Q. Turning to Page 9, do you know what that is a
 8 picture of?
 9 A. Once again, it appears to be a picture of --
 10 of one of the external drives.
 11 Q. I take it similar to the drive that we saw in
 12 the picture immediately before that you have
 13 no specific recollection of what material is
 14 contained on this drive, correct?
 15 A. That's correct.
 16 Q. Is it fair to say that you do not have any
 17 specific recollection of what information is
 18 contained on any of the hard drives or the
 19 thumb drives that are photographed that
 20 appear in Exhibit 2?
 21 A. Well, it's very similar with all of them was
 22 my impression. So it was -- it would be very
 23 difficult to say what was on which. I mean,
 24 I don't know offhand -- like there were
 25 two -- for example, there were two drives

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1 that were identical in appearance, but they
 2 seemed to be backups of the same hard drive
 3 but at different times. So that would be
 4 very hard for me to say which was the 2011
 5 set and which was the 2013 set, for example.
 6 Q. You testified earlier when -- under your
 7 examination with plaintiffs' counsel that you
 8 recognized one of the hard drives because of
 9 the blue rubber band that was around it.
 10 A. No, the blue cover.
 11 Q. Blue cover. Turning your attention to Page
 12 15 of Exhibit 2, is that the blue -- is that
 13 a picture of the blue cover you were
 14 referring to when you testified earlier?
 15 A. It -- it -- I would assume that it is the
 16 cover that I was referring to.
 17 Q. And what did -- what is it about that cover
 18 that stood out in your mind?
 19 A. You know, this -- it wasn't an effort at
 20 precision. I just remembered that this was a
 21 cover that went typically with a brand and
 22 type of external storage device that my
 23 father liked to use. And I had a hunch -- I
 24 was hoping that it would be what it turned
 25 out to be and that is a backup of the -- my

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1 parents' personal computer, which would
 2 contain the files that I was looking for of
 3 mine.
 4 Q. In the subpoena that you received from
 5 Arnold & Porter there was a specific request
 6 looking for materials relating to the 2011 or
 7 the 2017 North Carolina redistricting. You
 8 understood that, correct?
 9 A. Yes, I -- yes.
 10 Q. Did you undertake any efforts to limit the
 11 materials that you were turning over to
 12 Arnold & Porter in response to the subpoena
 13 to only documents that related to the 2011 or
 14 2017 North Carolina redistricting?
 15 MR. JONES: I'll -- I'll -- I'll
 16 object. I think it mischaracterizes the
 17 scope of the face of the subpoena.
 18 MR. SPARKS: Go ahead and answer.
 19 A. The request was for any and all materials
 20 that might, so I -- since there appeared to
 21 be relevant -- relevant data, I -- I think I
 22 already answered this question. I think the
 23 idea was that it was going to be preserved
 24 and that I would not be deciding which files
 25 would go and which files wouldn't.

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1 Q. I take it from your answer that you did not
 2 review each hard drive and each thumb drive
 3 to confirm that each hard drive and each
 4 thumb drive, in fact, had any information
 5 with respect to the 2011 or 2017 North
 6 Carolina redistricting; instead, you just
 7 turned it over in its entirety --
 8 A. I was answering the subpoena --
 9 MR. SPARKS: Let her finish.
 10 THE WITNESS: Sorry.
 11 BY MR. SPARKS:
 12 Q. -- to Arnold & Porter, correct?
 13 A. Yes. Yes.
 14 Q. You testified earlier when you took the
 15 electronic hard drives and thumb drives from
 16 your father's home you said you were so
 17 thrilled to have precious data of yours. You
 18 said mine, but -- what precious data were you
 19 referring to?
 20 A. Pictures of me and my infant children,
 21 pictures of me on my property in West
 22 Virginia, pictures of dead friends, music
 23 recorded years ago by me and a friend who had
 24 a band together, letters that I had written
 25 to friends, letters that I wrote to my

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1 father, documents that I might have otherwise
 2 possession of if it weren't for first a house
 3 fire that destroyed everything I owned in
 4 2013 and also a divorce in which everything
 5 else that I had pretty much was, you know,
 6 left in the hands of -- of someone I didn't
 7 really feel like communicating with.
 8 Q. You didn't consider the records relating to
 9 your father's work -- redistricting work to
 10 be your data, correct?
 11 A. The hard drives were given to me by my -- by
 12 my mother, so I would say that I considered
 13 everything on those hard drives that my
 14 father had left in his room that my mother
 15 gave to me unconditionally -- I considered
 16 all of it mine at that point when it was
 17 given to me by my deceased father's wife.
 18 Q. Even if the material related to your father's
 19 business with another business partner, you
 20 considered it your material, your --
 21 A. I considered the stor- --
 22 MR. JONES: Ob- -- objection. It's
 23 been asked and answered.
 24 MR. SPARKS: Go ahead and answer.
 25 A. I considered everything that my mother gave

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1 me that had previously belonged to my father
 2 who was now dead mine, yes.
 3 Q. Did your father have a will?
 4 A. Yes.
 5 Q. Do you know if in the will there was any
 6 provision with respect to his personal
 7 property and who the personal property would
 8 be left to?
 9 A. My understanding, not being an estate
 10 attorney, is my mother was the beneficiary.
 11 Q. Have you seen a copy of the will?
 12 A. Yes.
 13 Q. Did you -- did your father make any direct
 14 gifts to you in the will?
 15 A. I don't believe he did, no.
 16 Q. Did your father in the will address anything
 17 related to his -- his business records,
 18 business files?
 19 A. I don't recall.
 20 Q. Prior to turning over the electronic files to
 21 Arnold & Porter you said you spent two to
 22 three hours immediately before turning them
 23 over to Arnold & Porter. I would like to
 24 understand how much time in total you spent
 25 reviewing the materials at any point in time

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1 before you gave them to Arnold & Porter.
 2 A. That would be difficult. Do you mean -- you
 3 know, I -- for example, I printed out copies
 4 of pictures of me and my children. Do you
 5 consider me putting those on my wall time
 6 reviewing the materials?
 7 Q. No. Time spent looking through the
 8 electronic files on a computer.
 9 A. That would be very difficult to determine. I
 10 mean, I don't know. How much time do you
 11 spend looking at pictures of your children?
 12 Q. Putting aside the amount -- well --
 13 A. I didn't spend a lot of time looking at my
 14 father's work files if that's what you're
 15 driving at. No, I didn't.
 16 Q. So let's focus on that point. Putting aside
 17 the time you spent looking through files that
 18 related to you or photographs related to you
 19 or issues that were personal to you, putting
 20 all of those personal materials aside, how
 21 much time would you estimate you spent
 22 reviewing files that related to your father,
 23 his redistricting work, his business records,
 24 any expert documents he may have created,
 25 those materials?

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1 A. Well, it's also hard because there were
 2 certain situations in some of those backups
 3 where there were folders that contained a
 4 multitude of mixed documents. In certain
 5 cases I would open something thinking that it
 6 was one thing and find that it was something
 7 different. So there were -- there were both
 8 situations where -- for example, news
 9 articles that he had in a folder of -- I
 10 believe there were a lot of -- of news
 11 articles that I actually read through that he
 12 had saved, maybe articles even that mentioned
 13 him specifically and, of course, I was
 14 interested in preserving that. Of course, I
 15 wanted, you know, a scrapbook of my father
 16 and so -- also, there were -- just looking at
 17 the file extensions and having a basic
 18 familiarity with my father's work, I knew a
 19 lot of them would be file extensions that I
 20 wouldn't even be able to open considering
 21 that I didn't have the right proprietary
 22 software. So -- wow. I really -- it would
 23 be very difficult for me to give an estimate.
 24 I don't really understand. Maybe -- I mean,
 25 not -- not to be snide, but what -- what --

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1 what -- what exactly are we driving at? How
 2 many hours I spent looking specifically at
 3 just the files in folders that contained
 4 things like, again, letters to me, old trust
 5 documents, letters that my grandfather sent
 6 to my father, and interesting stories and
 7 maybe a few photographs, some of them of my
 8 father and my relatives, some of them my
 9 father and my children, some of them me and
 10 my children? It would be -- it would be very
 11 difficult to give you an estimate of how many
 12 of those minutes were spent looking at files
 13 that were specifically related to his work,
 14 much less specifically related to which -- I
 15 mean, I wouldn't be able to distinguish the
 16 legislative maps from the congressional
 17 district maps.

18 Q. Is it fair to say that the majority of the
 19 time you spent reviewing the files was spent
 20 reviewing materials related personal to you
 21 and that, in comparison, you spent very
 22 little time reviewing files related --

23 A. Very little --

24 Q. -- to your father's --

25 A. -- is kind of a --

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1 MR. SPARKS: Hold, please.

2 BY MS. SCULLY:

3 Q. -- work? Yeah. It's a --

4 A. I'm sorry.

5 Q. It's -- my question, is it fair to say that?

6 MR. JONES: Objection, asked and
 7 answered.

8 MR. SPARKS: Please answer.

9 A. Yes.

10 MR. JONES: We've been going about
 11 an -- about an hour.

12 MS. SCULLY: We can take a break.

13 MR. JONES: Can we take a break?

14 THE WITNESS: This time I am going to
 15 smoke a cigarette.

16 THE VIDEOGRAPHER: Going off the
 17 record. The time is 11:39 a.m.

18 (Whereupon, there was a recess in the
 19 proceedings from 11:39 a.m. to 11:59 a.m.)

20 THE VIDEOGRAPHER: Going back on the
 21 record. The time is 11:59 a.m.

22 BY MR. SPARKS:

23 Q. Ms. Hofeller, you testified earlier today
 24 that Dale got all the good stuff. What did
 25 you mean by that?

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1 A. The specifically work-related stuff, the
 2 stuff that would be -- you know, the stuff
 3 that he wanted, the stuff that he felt was
 4 pertinent.

5 Q. And you said he took two computers from your
 6 father's office; is that correct?

7 A. That's what I'm told.

8 Q. You've also testified today that these hard
 9 drives and the thumb drives, you understood
 10 them to be backups, correct?

11 A. That's correct.

12 Q. Was it your understanding that your father's
 13 work-related files that they had on the
 14 computer that Dale Oldham had taken or
 15 computers that he'd taken were also backed up
 16 on any of these hard drives or thumb drives
 17 that you received?

18 MR. JONES: Ob- -- objection, calls for
 19 speculation.

20 A. Honestly, if I speculated I would speculate
 21 that any backups that had been done
 22 specifically of the work computers would be
 23 already taken by him. I did not -- I did
 24 not -- actually, the opposite. I assumed
 25 that these were personal backups because they

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1 were there with -- with those things. And,
 2 again, it's -- it's always been a little
 3 bit -- those lines have always been a bit
 4 blurry in the household.

5 MR. BRANCH: All right. I'm --

6 BY MS. SCULLY:

7 Q. Do you --

8 MR. BRANCH: -- going to remind
 9 everybody here that under the North Carolina
 10 rules, counsel's only supposed to object to
 11 the form of the question. There are no
 12 speaking objections allowed in North
 13 Carolina. This is multiple times now that
 14 the witness has changed her answer in
 15 response to a speaking objection by
 16 Mr. Jones. Now, unless I'm mistaken,
 17 Mr. Jones, you do not represent the witness.
 18 Under the rules you can object to the form of
 19 the question and that's it. You can't
 20 instruct her not to answer and she should not
 21 be changing her testimony in response to
 22 something that you articulate for her.

23 BY MS. SCULLY:

24 Q. Ms. Hofeller, do you, in fact, know one way
 25 or another if the information that was

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1 contained on the hard drives and the thumb
 2 drives that you provided to Arnold & Porter
 3 were in part duplicative of the information
 4 that was contained on the computers that Dale
 5 Oldham took possession of?
 6 A. I really don't know. I really honestly don't
 7 know.
 8 Q. Turning back to your communications with
 9 Common Cause, you testified earlier that your
 10 first outreach to Common Cause was a
 11 communication that you had with someone named
 12 Bob Phillips, correct?
 13 A. Correct.
 14 Q. When did that communication occur?
 15 A. That would have been in very -- very early
 16 November, the first week of November.
 17 Q. How many times did you speak with
 18 Mr. Phillips?
 19 A. Once.
 20 Q. Was your communication with Mr. Phillips in
 21 person, telephonic? How did you communicate
 22 with him?
 23 A. Telephonic.
 24 Q. What did you know about Common Cause when you
 25 reached out to Mr. Phillips?

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1 A. I knew that they were representing the
 2 interest of voters that felt that this
 3 redistricting represented a violation of
 4 their constitutional rights.
 5 Q. And the redistricting that you're referring
 6 to, does that include the maps that were
 7 prepared by your father, Mr. Hofeller, in
 8 North Carolina?
 9 A. Yes.
 10 Q. So you understood that Common Cause was
 11 seeking to have the redistricting maps that
 12 your father had prepared thrown out, correct?
 13 A. Yes.
 14 Q. You knew that Common Cause was antagonistic
 15 to the work of your father, Mr. Hofeller,
 16 correct?
 17 A. I didn't know that they were -- initially, I
 18 did not know that they were antagonistic to
 19 the new maps.
 20 Q. When you say the new maps, what do you mean
 21 by that?
 22 A. Well, he's drawn more than one set, so
 23 interesting to know I didn't actually know
 24 that there was a new case when I first spoke
 25 to Common Cause. I thought that this was all

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1 concerning maps that had already been
 2 redrawn.
 3 Q. You knew historically that Common Cause had
 4 been antagonistic to the work that your
 5 father had done in North Carolina, correct?
 6 A. If -- if -- if that's the way to characterize
 7 it, then, yes.
 8 Q. I believe you testified you reached out to
 9 Mr. Phillips to seek a referral for your
 10 mother. Did you communicate any specific
 11 details to Mr. Phillips about why you were
 12 looking for an attorney for your mother?
 13 A. Yes, so that I could get the right kind of
 14 attorney.
 15 Q. What -- can you share with me specifically to
 16 the best of your recollection what you said
 17 to Mr. Phillips when you communicated with
 18 him on the phone?
 19 A. That my mother was facing a challenge to her
 20 competence.
 21 Q. Did you share with Mr. Phillips who had
 22 brought the incompetency petition against
 23 her?
 24 A. No.
 25 Q. Did you share with Mr. Phillips any

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1 information about who was involved in the
 2 incompetency proceedings?
 3 A. Not specifically, no.
 4 Q. If I recall correctly, you testified that
 5 Mr. Phillips then put you in touch with Jane
 6 Pinsky?
 7 A. That's correct.
 8 Q. Jane Pinsky also works for Common Cause?
 9 A. Yes.
 10 Q. Is Ms. Pinsky a lawyer, if you know?
 11 A. I don't think she is.
 12 Q. How many times did you speak with Ms. Pinsky?
 13 A. In total I believe that we had three -- three
 14 or four conversations, all on the phone.
 15 Q. Do you know what Ms. Pinsky's title is with
 16 Common Cause?
 17 A. Not offhand, no.
 18 Q. I want to go through the three or four
 19 communications that you had with Ms. Pinsky.
 20 Do you recall the first communication you had
 21 with her --
 22 A. Yes.
 23 Q. -- the time period?
 24 A. That would have been also very early
 25 November. Sometime during the first --

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1 sometime during the first eight or nine days
2 of November.
3 Q. Was anyone else on the phone during that
4 first communication that you had with
5 Ms. Pinsky?
6 A. Not that I know of.
7 Q. Approximately how long did that first
8 communication with Ms. Pinsky last?
9 A. I'm not -- it wasn't a particularly long
10 conversation. Ten minutes, maybe -- maybe,
11 if that.
12 Q. Tell me what you recall about that
13 conversation, what you said and what she
14 said.
15 A. She had -- she -- we confirmed that this was
16 about the matter of referral and that Bob had
17 said that she would be the one that would --
18 was more familiar with the names of -- of
19 local attorneys. And she had some names for
20 me and so I took down those names, and she
21 wished me luck and expressed condolences for
22 the loss of my father and I think that was
23 about it in that first conversation, I think.
24 Q. When you first communicated with Ms. Pinsky,
25 did she give you the impression that she was

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1 expecting your call? Did you make the call
2 to her?
3 A. I re- -- I think we -- I don't actually know
4 who initiated the call that was the one where
5 we actually spoke. We exchanged a few
6 messages. I got an e-mail from Bob saying
7 that he had told Jane to reach out to me and
8 then exactly what combination of who left who
9 what message, I'm not honestly sure.
10 Q. You had an e-mail communication with Bob.
11 How many e-mail communications did you have
12 with Mr. Phillips?
13 A. One. I mean, one conversation. It was, I
14 think, maybe two, maybe three messages, his
15 saying that and me saying thank you. So I
16 think was -- two, I think, was all.
17 Q. I just want to make sure I understand your
18 testimony. You had one telephone
19 conversation with Mr. Phillips and then you
20 had one e-mail with Mr. Phillips, but the
21 e-mail may have had a couple of threads
22 within it?
23 A. Recalling to my best ability, it was -- the
24 e-mail would have contained his noted that I
25 would be hearing from Jane and my thanks --

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1 Q. Reply.
2 A. -- for the -- for that.
3 Q. Did you have any e-mail communications with
4 Jane Pinsky?
5 A. I think that I did, yes, because I wanted --
6 we -- we were confirming names and numbers
7 and things. Like I didn't know how do you
8 spell that and I said, can you just e-mail me
9 that? And -- and then I think it was more --
10 I think maybe one more time in e-mail --
11 she -- she really prefers the phone. We --
12 we both kind of felt that way, I think. So
13 any further e-mail was more to the -- to
14 the -- to the -- like, are you going to be at
15 the office? Can I reach you today? Are you
16 busy? That sort of thing. Like the --
17 that -- that predicated the -- a follow-up
18 phone call about those attorneys. It was
19 still pretty much exclusively on that and
20 just sort of incidentals on the topic of --
21 of what this proceeding against my mother
22 really actually was, you know, very -- I
23 didn't know much about what -- what -- what
24 was actually being asserted. It's hard to
25 explain. It wasn't really very detailed. It

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1 was just kind of clarifying what kind of
2 attorney I would need, I think, really,
3 whether this is -- is this an estate
4 attorney? Is this a litigation attorney? Is
5 this -- and a lot of my questions she would
6 then say, you know, I would have to -- I
7 would have to ask an attorney what kind of
8 attorney you need for your mother, that sort
9 of thing.
10 Q. Did you share with Ms. Pinsky any of the
11 documents from the incompetency proceedings,
12 any of the legal documents --
13 A. No.
14 Q. -- court documents?
15 A. No, I don't -- no, I don't think I did,
16 actually. It didn't seem necessary or
17 appropriate since she wasn't the attorney.
18 Q. Approximately how many e-mail communications
19 did you have with Ms. Pinsky?
20 A. I think maybe a grand total of two, if two.
21 I would have to look. It may even be just
22 one thread. I hon- -- I didn't really study
23 it.
24 Q. Your first conversation that you had with
25 Ms. Pinsky in early November, first eight or

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1 nine days, said lasted approximately ten
 2 minutes. Can you tell me what you recall
 3 specifically about what was discussed during
 4 that conversation, what you said to her and
 5 what she said to you?
 6 A. I don't recall specifics, no. I -- it was --
 7 I was just trying to get an attorney for my
 8 mother, so I don't remember exactly what I
 9 said on the --
 10 Q. In that first communication did she give you
 11 names of attorneys that you could reach out
 12 to?
 13 A. Yes.
 14 Q. In the first conversation that you had with
 15 Ms. Pinsky did you talk substantively about
 16 who was involved in the incompetency
 17 proceedings?
 18 A. No.
 19 Q. Did you at any point in time discuss with
 20 Ms. Pinsky who was involved in the
 21 incompetency proceedings?
 22 A. Not that I recall, no. I really said very
 23 little other than I felt that the fact that
 24 my father had so many friends and coworkers
 25 and colleagues and -- and supporters and

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1 really, frankly, people who really, really,
 2 really idolized him and -- and -- and had
 3 kind of a -- a nonhuman vision of him, and
 4 that was why I was contacting Common Cause.
 5 I didn't have any -- I wasn't expecting there
 6 to be a discussion about specific names. It
 7 seemed to me from the point of view where I
 8 was at the time that the specific names were
 9 going to have to be people in Raleigh that
 10 didn't worship my father. There was no need
 11 to -- no need to -- to -- to detail. And
 12 also I wasn't really trying to discuss the
 13 merits of my mother's matter with -- with --
 14 with Common Cause. I was only trying to
 15 really seriously just hope that I might find
 16 an attorney in Raleigh that was independent
 17 of -- of my father and -- and the people he
 18 worked for.
 19 Q. When you say independent from your father,
 20 what do you mean by that?
 21 A. I mean that in matters that concern a man as
 22 a person, often when you're dealing with
 23 people that only know him in a professional
 24 context and have a great deal of their
 25 personal and professional life mingled with

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1 that image, when you begin to speak about
 2 that person as if they were a human being
 3 with multitudes of emotions, contradictions,
 4 all of those things, often people get
 5 hostile. If you are -- if you are bringing a
 6 human image to a hero's image, they -- they
 7 sometimes feel that maybe they -- they get
 8 angry.
 9 Q. How did your father's work in redistricting
 10 relate, if at all, to the incompetency
 11 proceedings that were ongoing with respect to
 12 your mother?
 13 A. Many people who only knew my father
 14 incidentally or knew him only in one context
 15 were resisting the assertion that I had that
 16 perhaps my mother and I would know better
 17 what it was that my father wanted that was
 18 not specifically spelled out. There was a
 19 lot of speculation about what your father
 20 wanted coming from a variety of sources, some
 21 people that really didn't know him very well
 22 outside of the context of work, and it was,
 23 frankly, a little bit offensive.
 24 Q. You did not have any conversations with your
 25 father regarding what he wanted to have

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1 happen with his work related to redistricting
 2 upon his death, did you?
 3 A. I don't believe I -- I don't believe I ever
 4 had a conversation with my father about what
 5 he wanted to have happen after his death
 6 pertaining specifically to his work. I think
 7 he felt that once he was dead, that his work
 8 to him at least would be no longer relevant.
 9 Q. What led you to that belief?
 10 A. He often would say that that was -- you know,
 11 if you're going to divide people into -- into
 12 camps of how they view death, my father
 13 would, whether he was sincere or not, he
 14 would often say, you know, sometimes
 15 jokingly -- I don't know how well you knew
 16 him, but he -- he had a -- he had a penchant
 17 for irony and he would often say, well, it
 18 won't matter once I'm dead, right? So -- he
 19 also said things like, I know that people on
 20 their deathbed very rarely look up and say, I
 21 wish I'd spent more time at work.
 22 Q. At what point in time did you discuss with
 23 Ms. Pinsky that you had some of your father's
 24 hard drives that you thought might be of
 25 interest to Common Cause?

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1 A. That would have been sometime in December.
 2 That was later. She -- she called me to ask
 3 how things were going with my mother because
 4 I also -- one of the things that I -- that
 5 comes -- that was coming pretty clear to
 6 anyone who talked to me in that time is there
 7 was a lot of -- there was a lot of emotion
 8 regarding the then still very recent death of
 9 my father and that it was -- it was sad that,
 10 you know, the principle concern about him,
 11 his life, and everything having to do with
 12 him was this -- this matter rather than the
 13 matter of his family.
 14 Q. How many conversations did you have with
 15 Ms. Pinsky about your father's hard drives
 16 and electronic materials that you had?
 17 A. I'm sure -- pretty -- pretty sure it was only
 18 one because she said that she really would
 19 not be certain -- I mean, really, that was
 20 it. I said -- we -- we had that
 21 conversation. She said, I'll ask the
 22 lawyers. And I think then any further
 23 conversation at all about those -- that media
 24 was had with the attorneys.
 25 Q. When you say Ms. Pinsky said, I'll ask the

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1 lawyers, was that in response to a question
 2 you asked her? What do you mean by that?
 3 A. That was not a response to a specific
 4 question. That was a response to the
 5 conversation that had begun with me
 6 mentioning the David Daley interview and
 7 saying, I have hard drives. And in the
 8 context of that article he had -- David Daley
 9 had implied that those hard drives would have
 10 maps that the state legislators would like.
 11 I, once again, didn't really think that it
 12 was anything, you know -- I don't know how to
 13 describe it. I --
 14 Q. Do you -- do you have an understanding of
 15 which lawyer she was referring to when
 16 Ms. Pinsky said, I'll ask the lawyers?
 17 A. The -- the lawyers who were involved in this
 18 matter since we were discussing whether or
 19 not there would be any use -- any
 20 admissibility. Again, I thought -- I wasn't
 21 even sure that -- I didn't even understand --
 22 at that moment when I spoke to her the first
 23 time about it and mentioned that article, I
 24 was under the impression that everything in
 25 this matter was on appeal so I wasn't

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1 thinking of it in terms of -- of evidence for
 2 any case. I was thinking of it more just as
 3 a -- an archival -- an academic interest.
 4 Q. When did you come to the understanding that
 5 this action in which you received the
 6 subpoena is still at the trial level and not
 7 on appeal?
 8 A. Actually, what's funny is that I was -- I was
 9 a little bit confused and, again, other
 10 matters were really, really pressing
 11 throughout, so I wasn't spending a lot of
 12 time studying what was going on with this. I
 13 had somehow gotten the impression that this
 14 already was in appeal, but for some reason
 15 this was -- because it was going to the lower
 16 court that it wasn't. I -- I just -- you
 17 know, I'm used to lawyers saying things.
 18 Okay, all right, whatever. I didn't even
 19 know -- I just thought it was a certain type
 20 of appeal that I wasn't even familiar with.
 21 I didn't actually understand completely that
 22 this was a new matter until it was said so
 23 like about a week ago. I -- I just -- all I
 24 knew -- all I knew for certain was that
 25 unlike the congressional districts that are

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1 at the U.S. Supreme Court, this matter
 2 would -- that new evidence would be allowed.
 3 That was what was clear.
 4 Q. How did you come to that understanding?
 5 A. Because the -- because that first
 6 conversation that -- on the matter -- I think
 7 Jane mentioned that there might be. I think
 8 might be. And, again, she was always saying,
 9 you know, I'm not -- you know, I would have
 10 to confirm that with the attorneys as a, you
 11 know, good public servant.
 12 Q. What was Jane having to confirm with the
 13 attorneys?
 14 A. That there would be -- that -- that the --
 15 that the hard drives would be potential --
 16 potentially usable as evidence in that the
 17 matter was open in that regard. I just,
 18 again, initially felt that Common Cause,
 19 being not directly affiliated with my father,
 20 would be a good -- literally like a
 21 repository for the information that I felt
 22 had historical value beyond any partisan
 23 interest but, rather -- I even used the words
 24 insight into the process -- the literal
 25 process because I -- I -- again, I'm not an

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1 expert on redistricting, but I have worked in
 2 political demographics and I have alongside
 3 my father -- you know, he studied political
 4 philosophy in general. So the -- the
 5 academic interest in this was -- was
 6 paramount to me even above any other
 7 potential. I did -- I'm not a North Carolina
 8 resident. I'm not a North Carolina voter. I
 9 have no personal concern about what happens
 10 in this case beyond the fact that this
 11 would -- this -- this man was my father and
 12 my mother was being -- being -- having a -- a
 13 very unpleasant procedure in a town that was
 14 not our home where the only people we even --
 15 that she even knew were people that had been
 16 working with my father.
 17 Q. I believe you testified that Jane mentioned
 18 there might be some use for your father's
 19 materials as evidence, correct?
 20 A. She did not put it in terms of use as
 21 evidence. She simply stated that the matter
 22 in the lower house was not a closed matter as
 23 far as evidence was concerned. I think
 24 that -- I don't remember her exact words, but
 25 there was no implication in that that there

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1 would be a literal use, just that there's
 2 even a possibility that new evidence could be
 3 heard on this matter at all.
 4 Q. So you did understand based on your
 5 communications with Ms. Pinsky that there was
 6 a possibility that this information might be
 7 useful in the matter, correct?
 8 A. Yes.
 9 Q. And --
 10 MR. SPARKS: I need to clarify one
 11 thing. I'm sorry. You said lower house.
 12 Did you mean lower court?
 13 THE WITNESS: Lower court, yes. I'm
 14 sorry.
 15 MR. SPARKS: Go ahead.
 16 BY MS. SCULLY:
 17 Q. And the party you were producing the
 18 information that might be useful to was on
 19 the opposite side from the work your father
 20 had done, correct?
 21 MR. JONES: Objection, asked and
 22 answered.
 23 MR. SPEAS: That's not a --
 24 A. I understood that Common Cause was
 25 representing the voters.

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1 Q. Did Ms. Pinsky put you eventually in
 2 communication with any of the attorneys in
 3 this litigation?
 4 A. Yes.
 5 Q. Did you initiate the communications with any
 6 of the attorneys in this litigation?
 7 A. No.
 8 Q. Who did you first speak with as an attorney
 9 in this litigation?
 10 A. I got a text from Eddie Speas.
 11 Q. Do you still have a copy of the text message
 12 you received from him?
 13 A. I don't.
 14 Q. When did you receive the text from him, if
 15 you recall?
 16 A. Shortly after that conversation with Jane. I
 17 believe that was December. I'm honestly -- I
 18 really -- I didn't -- the phone that I was
 19 using was running out of storage so it was --
 20 it was kind of -- you know, the phones will
 21 tend to dump those text messages. There was
 22 really no way for me to -- to track it back
 23 to exactly when.
 24 Q. So you believe it was sometime in December
 25 2018 you received a text message from Eddie

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1 Speas, Jr. -- 2018, thank you, correct?
 2 A. Yes.
 3 Q. What do you recall the text message saying?
 4 A. Intro -- he introduced himself and -- and
 5 basically said that -- I don't remember exact
 6 words. More like, Jane said you might be
 7 willing to -- to speak to us, something along
 8 those lines, and basically asking permission
 9 for contact and doing what is now polite in
 10 business and -- if you have a cell phone, you
 11 introduce yourself over text so that if he
 12 were to call again, I would know what that
 13 number was.
 14 Q. Did you respond to the text message?
 15 A. Yes.
 16 Q. How did you respond?
 17 A. Yes. I don't know if I said more than just
 18 yes. Maybe something polite just to -- to
 19 make it not so terse, but --
 20 Q. You responded via text; is that correct?
 21 A. Yes, I did.
 22 Q. Approximately how many text communications
 23 have you had with Mr. Speas?
 24 A. Not very many. There -- it was really more
 25 just an effort to schedule phone calls.

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1 Q. You have had more than one text communication
 2 with Mr. Speas, correct?
 3 A. I think there were may- -- I think there were
 4 two, one in advance of -- of -- of two phone
 5 calls, two, you know, are you going to be
 6 available at such and such a time sort of
 7 thing.
 8 Q. After you communicated in response to
 9 Mr. Speas's first text where you said, yes,
 10 willing to talk to you, when was the next
 11 time you spoke with Mr. Speas?
 12 A. I think that that was about a week or so. It
 13 was -- you know, it was starting to get close
 14 to the holidays so, you know, there was time
 15 between communiques. If -- if, you know,
 16 research needed to be done or references
 17 or -- or questions asked, it -- everything
 18 was starting to take a lot longer because it
 19 was the holiday season.
 20 Q. The next time you spoke with Mr. Speas, was
 21 that a telephone communication?
 22 A. Yes.
 23 Q. Did you initiate the call?
 24 A. I don't know. I really don't remember. It
 25 was -- we -- the idea being follow-up

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1 questions need to be asked on our end and --
 2 and it -- the -- the discussion continued as
 3 to whether or not there was -- I don't know.
 4 I think I -- I don't know how to -- to
 5 explain it any differently than I've already
 6 explained it, frankly.
 7 Q. On the first telephone call that you had with
 8 Mr. Speas, was there anyone else on the call
 9 as far as you know?
 10 A. No.
 11 Q. So just you and Mr. Speas on the first
 12 telephone call?
 13 A. That's how I remember it.
 14 Q. And that's all I can ask you for is the best
 15 of your recollection --
 16 A. Yeah.
 17 Q. -- today. Approximately how long did the
 18 first telephone call between you and
 19 Mr. Speas last?
 20 A. Maybe ten minutes, again, just -- there was
 21 not a lot of detail --
 22 Q. Tell me --
 23 A. -- discussed. It was really more just a
 24 friendly business-style conversation.
 25 Q. Tell me as -- to the best of your

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1 recollection what you said and what Mr. Speas
 2 said on that first telephone call.
 3 A. I said that I had -- I said that I had
 4 material that might be relevant to the case.
 5 Q. Did you explain in any further detail what
 6 material you had?
 7 A. Vague detail, external storage devices
 8 that -- I don't know whether or not I
 9 mentioned -- I -- I don't think I
 10 specifically said backups. I just said
 11 external storage devices.
 12 Q. What do you recall Mr. Speas saying in
 13 response to that?
 14 A. I believe that he did even in that first
 15 phone call want to clarify that these were --
 16 that -- that these had been given to me.
 17 Q. What specifically did Mr. Speas ask you about
 18 the hard drives?
 19 A. The -- I think if they'd been given to me.
 20 Q. And so your recollection is Mr. Speas said,
 21 have these been given to you?
 22 A. I don't know what his exact words were. The
 23 gist of it was, are they yours, and I said
 24 that they had, indeed, been given to me.
 25 Q. Did you tell him the circumstances under

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1 which you had obtained them?
 2 A. More or less, that along with things that
 3 literally belonged to me and things that I
 4 took to mean from my father that he wanted me
 5 to have, I had -- I had asked for these, you
 6 know, and as I said, I asked my mother if I
 7 could take my jewelry box, too, even though,
 8 of course, the answer would have been yes and
 9 many -- many would say that if it was
 10 something that I left with my father of mine
 11 specifically with the intent that he would
 12 hold it for me, that when I came to his
 13 apartment after his death, that anything that
 14 had belonged to me up till the point of his
 15 death was already mine, but I still went to
 16 the extra effort to make sure because, you
 17 know, I -- I didn't want to -- I didn't want
 18 to give anyone the impression that I was
 19 there to -- to pick over the corpse.
 20 Q. Just to clarify, your -- your father never
 21 told you he wanted you to have his external
 22 hard drives or these thumb drives, correct?
 23 A. He said that he wanted -- that he would keep
 24 the data that I had stored on his computer.
 25 With that I took to mean -- we didn't really

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1 get a chance to discuss the details of all of
 2 his personal effects because when I last
 3 spoke to him he wasn't dying.
 4 Q. The information you turned over to Arnold &
 5 Porter in response to the subpoena was not
 6 limited to the -- your personal data that you
 7 discussed with your father that he would
 8 preserve for you, correct?
 9 A. Correct.
 10 Q. You did not have any conversations with your
 11 father in which he told you he wanted you to
 12 have possession of his hard drives or thumb
 13 drives which you've turned over to Arnold &
 14 Porter, correct?
 15 MR. JONES: Objection, asked and
 16 answered.
 17 A. No.
 18 Q. In your initial conversation with Mr. Speas
 19 did you share with him your understanding
 20 that the external hard drives and thumb
 21 drives that you had contained your --
 22 contained information regarding your father's
 23 redistricting work including his expert
 24 consulting work?
 25 A. Could -- could you ask the question again?

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1 I'm sorry.
 2 Q. Did you share with Mr. Speas any detailed
 3 information about what you believed these
 4 hard drives and thumb drives -- what the
 5 materials were on those hard drives and thumb
 6 drives?
 7 A. I did not get very specific, no. That is how
 8 I'm accustomed to doing things with attorneys
 9 is that attorneys decide what's relevant and
 10 what isn't and that if there's a chance that
 11 it might be relevant to a matter that that
 12 attorney is working on, that I would say,
 13 this might be relevant to the matter that
 14 you're working on. So that was pretty much
 15 what I said. I don't recall talking about
 16 specific files. I don't think that there
 17 was -- already we -- there was a feeling that
 18 it would be most proper to say, this might be
 19 relevant, and then to not speculate further.
 20 Q. Did anyone from Arnold & Porter specifically
 21 tell you that would be the better way to
 22 proceed, to give --
 23 A. I did not have any discussion with anyone
 24 from Arnold Porter.
 25 Q. Okay. Did anyone from -- I apologize --

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1 Poyner Spruill tell you that the best way to
 2 proceed would be to give them the entirety of
 3 the contents?
 4 A. Well, I didn't necessarily know who was and
 5 wasn't with Pointer Spruill [sic]. I only
 6 knew that these were attorneys that were
 7 working on the matter.
 8 Q. Did Mr. Speas or Ms. Mackie ever tell you
 9 that it would be best for you to turn over
 10 the entirety --
 11 A. They didn't say that it would be best. I'm
 12 sorry. They said that it would be a -- a --
 13 a better preservation of the integrity, that
 14 the chain of custody would be transparent and
 15 in that transparency, the integrity of the --
 16 of the potential evidence would be preserved.
 17 Q. Who told you that, Mr. Speas, Mr. Mackie, or
 18 both?
 19 MR. FARR: It's Ms. Mackie.
 20 A. Ms. Mackie.
 21 Q. Ms. Mackie. Sorry.
 22 A. I -- I don't recall which one of them said
 23 that. I'm sorry. I really don't.
 24 Q. This was a discussion you had with Mr. Speas
 25 or Ms. Mackie prior to your receiving the

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1 subpoena, correct?
 2 A. I -- I don't know. Now that you ask, I don't
 3 know which -- because at some point,
 4 honestly, I, once again, had assumed that
 5 this had all been seen before and I was
 6 really honestly talking about the fact that
 7 there was personal information of mine and
 8 explaining that, once again, it's that
 9 classic, okay, you know, just because you
 10 don't have anything to hide doesn't mean that
 11 you aren't entitled to privacy. So I
 12 actually did have a -- you know, with my dad
 13 echoing in my ear that you ask about that. I
 14 was getting ready to potentially turn over
 15 data that was personal to me as well so I
 16 really wanted to find out what the intentions
 17 were. And it was explained to me that --
 18 that this was quite clear -- it was quite
 19 clear that -- that anyone, either the -- the
 20 legislative defendants or the plaintiffs,
 21 were only properly entitled to even look at
 22 the content of files that were explicitly and
 23 obviously related to this case.
 24 Q. And that was something that either Mr. Speas
 25 or Ms. Mackie told you, that the only

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1 information anyone would be entitled to look
 2 at is information related to the
 3 redistricting and that no one would be
 4 entitled to look at any of your personal --
 5 A. Well --
 6 Q. -- information?
 7 A. -- no -- I'm sorry. No one in this -- in
 8 this -- in this matter, yes.
 9 Q. Is it your understanding that your personal
 10 information to the extent it existed on the
 11 hard drives and the thumb drives has been
 12 maintained by Poyner Spruill and has not been
 13 produced in this litigation?
 14 A. You know, I haven't really been keeping up to
 15 date on -- I know that it's a matter of
 16 contention. I know that I was a little
 17 bit -- kind of raised my eyebrows when I
 18 found out that the legislative defendants
 19 felt that they needed to see everything,
 20 but -- I knew that that was probably going to
 21 be the end result because I know how
 22 litigation goes and I myself have been the
 23 subject of, you know, quite a few
 24 speculations about whether or not a person is
 25 entitled to privacy or confidentiality.

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1 Usually the answer ends up somehow being no
 2 so with that expectation, I still yet spoke
 3 my intention and that was that my personal
 4 data be protected, that my mother's personal
 5 data be protected, and that my father's
 6 personal data be protected, and that the only
 7 things that were on these drives that would
 8 be -- would be looked at on paper was files
 9 that were explicitly and clearly related to
 10 this matter. So when the legislative
 11 defendants moved to see it all, I -- I went,
 12 huh, well, what do you know. Wonder why they
 13 want that. That was about the extent of it,
 14 but it seemed pretty -- pretty predictable.
 15 My father used to often exasperate about,
 16 well, they -- they're not entitled to that,
 17 it's personal, so...
 18 Q. Did you have any conversations with Mr. Speas
 19 or with Ms. Mackie about the incompetency
 20 proceedings that you were dealing with with
 21 your mother?
 22 A. No. No. I mean, maybe I might have
 23 mentioned that that's how we got into
 24 conversation, because I was getting a
 25 referral, but, no, I did not discuss the

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1 incompetency matter with Eddie Speas or
 2 Caroline Mackie beyond the fact that it
 3 existed.
 4 Q. You do recall the -- having the discussion of
 5 the existence of the fact with them in the
 6 context --
 7 A. You know --
 8 Q. -- of the referral?
 9 A. -- I -- I'm sorry. I didn't mean to cut you
 10 off. I honestly don't know if -- if we
 11 discussed it even to that point. The only
 12 way in which there would have even been any
 13 awareness -- I don't even know if I got as
 14 specific as to say that it was incompetency.
 15 I think, honestly, I probably used some sort
 16 of colloquialism, à la Hofellerism, like,
 17 yeah, I got to beat the vultures off the
 18 widow. So really I think I put it more in
 19 terms like that. It was never my intention
 20 to discuss the matter or the merits of the
 21 case or anything specific with these
 22 attorneys. It was unrelated.
 23 Q. And who are the -- the vultures you were
 24 referring to?
 25 A. Various friends and family.

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1 Q. Who specifically?
 2 A. Trudy Harris, my cousin; a half-uncle who may
 3 or may not have been -- you know, there --
 4 it's -- it's been very unclear how many
 5 friends and family were expressing some sense
 6 of entitlement to things like my
 7 grandmother's jewelry, you know, things like
 8 that.
 9 Q. Were either Ms. Harris or your uncle involved
 10 at all in the incompetency proceedings?
 11 A. Involved, no. And, again, it's still yet
 12 unclear exactly. There's been very little
 13 transparency. So names of interested
 14 parties. That doesn't mean they were
 15 involved. It just means that someone, i.e.,
 16 the petitioner, may have looked on documents
 17 including trusts and wills and such and seen
 18 names of beneficiaries and simply written
 19 them down. I was all very unclear who was
 20 and wasn't literally involved. I mean, this
 21 is an estate. There's usually a mess when
 22 there's an estate that has any -- any
 23 interest to anyone at all.
 24 Q. During your first telephone call with
 25 Mr. Speas sometime in December 2018 did

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1 Mr. Speas during that communication talk
 2 about possibility of sending you a subpoena?
 3 A. I don't remember in which conversation, but,
 4 actually, I believe that it was -- I believe
 5 that it was Jane Pinsky that actually said
 6 they're going to send -- I think she said,
 7 they -- they asked me to let you know so that
 8 you would have a heads-up that there was a
 9 subpoena out.
 10 Q. So you had -- that there was a subpoena out.
 11 I don't understand.
 12 A. That it had been mailed --
 13 Q. Okay.
 14 A. -- or whatever.
 15 Q. Prior to your receiving the subpoena, it's
 16 your recollection that Ms. Pinsky called you
 17 to let you know that there was a subpoena
 18 being sent out?
 19 A. I don't know that that was the specific
 20 reason that she called. We had sort of --
 21 you know, we were -- we had casual
 22 conversation at that point because we --
 23 she -- she, once again, was asking me how
 24 things were going and was there -- you know,
 25 how -- how was my mother feeling, was she --

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1 how was she doing, because I'd told her that
 2 she was extremely stressed out and -- and
 3 emotionally -- emotionally drained and
 4 very -- feeling very vulnerable and -- and
 5 all because, you know, she really isn't --
 6 she isn't prepared for litigation. She was
 7 not expecting to be in such a -- an exposed
 8 position and, you know, my father had managed
 9 to keep her very sheltered from his work up
 10 until the point when he was no longer around
 11 to do that.
 12 Q. In the first telephone call that you had with
 13 Mr. Speas you told him that you had some
 14 external storage devices. You weren't sure
 15 if they were backup or not, but you had these
 16 materials. You said he asked you for
 17 clarification if they were yours and you said
 18 yes, they were yours.
 19 What else was discussed during that
 20 conversation, if you recall?
 21 A. I think at that point really that -- there
 22 wasn't much other than that. It was -- as
 23 communication with attorneys often is, you
 24 know, there was a -- a basic set of questions
 25 and then it was let's -- let's consult, let's

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1 re- -- do our research and get back to you.
 2 MR. SPARKS: Are you okay? Do you need
 3 a break?
 4 THE WITNESS: (Nods head).
 5 MS. SCULLY: We can take a break.
 6 MR. SPARKS: She seems to be tired.
 7 Thank you.
 8 THE VIDEOGRAPHER: Going off the
 9 record. The time is 12:47 p.m.
 10 (Whereupon, there was a recess in the
 11 proceedings from 12:47 p.m. to 1:04 p.m.)
 12 THE VIDEOGRAPHER: Going back on the
 13 record. The time is 1:04 p.m.
 14 BY MS. SCULLY:
 15 Q. Ms. Hofeller, before we went off the record
 16 we were talking about the first telephone
 17 communication that you had with Mr. Speas and
 18 I believe you testified that in conclusion of
 19 that conversation, Mr. Speas said something
 20 along the lines of, okay, we'll have to do
 21 some research. We'll be back in
 22 communication with you; is that correct?
 23 A. As far as I know. I mean, it -- it -- I
 24 remember it being very much what I would
 25 expect communication with an attorney on a

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1 civil matter to be like as in, tell us about
 2 what you have and we will then -- they -- I
 3 got the impression that they really wanted to
 4 make sure that -- that I was -- that this was
 5 a voluntary -- you know, that I was okay with
 6 the idea that -- that -- that I might -- you
 7 know, that this would be potentially involved
 8 in the matter, not just, you know, an aside.
 9 And with that they wanted to make sure that
 10 it was relevant really, I guess, would be the
 11 best word, that it was relevant. And before
 12 they even wanted to go into any more of the
 13 nuts and bolts, they wanted to make sure that
 14 this was even a relevant matter because I
 15 think the impression being that they didn't
 16 want to discuss -- they didn't want to
 17 discuss a lot with me that wasn't
 18 specifically relevant to the case.
 19 Q. When was the next communication that you
 20 recall having with Mr. Speas after this
 21 original approximately ten-minute phone
 22 conversation that you had with him sometime
 23 in December 2018?
 24 A. Well, again, my impressions from that time,
 25 mostly about the fact that the holidays were

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1 upon us and so there was a lot of -- there
 2 was a lot of phone tag. There was a lot of
 3 someone's going to be out of town and then
 4 another person's going to be on vacation and
 5 things like that. So I think -- I mean, the
 6 next -- the next conversation, I believe,
 7 that I can really firmly say it happened
 8 instead of just leaving messages would have,
 9 I think, been after the holidays, sometime --
 10 I think sometime in January, I think.

11 Q. That next conversation when you actually
 12 spoke with Mr. Speas, not just exchanging
 13 voicemail messages, sometime in January, did
 14 you make that call or did Mr. Speas call you?

15 A. I don't recall.

16 Q. Regardless of who initiated the call, who was
 17 on the call?

18 A. I think that -- I think that it was just --
 19 you know, it -- it -- it had come to the
 20 point where it was clear to me at least
 21 that -- that Eddie and Caroline were the
 22 attorneys that -- that were -- at Common
 23 Cause that were working on this matter. So,
 24 honestly, which -- which step was -- which --
 25 which bit of information was given to me by

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1 which one of them, Eddie or Caroline, it's
 2 kind of hard for me to recall off the top of
 3 my head, honestly. I'm not trying to be
 4 evasive. I just don't know who -- who said
 5 what. I was -- I was already thinking of
 6 them as interchangeable, you know, so --

7 Q. I understand.

8 A. -- it didn't seem relevant to me so I
 9 didn't -- I didn't make the point to remember
 10 who said what.

11 Q. Did you have any telephone conversations in
 12 which both Mr. Speas and Ms. Mackie were both
 13 on the line at the same time?

14 A. Yes. Yes, we did have at least one, and I
 15 think that was -- yeah, I think that would
 16 have been in January.

17 Q. What do you recall about that conversation
 18 with both Mr. Speas and Ms. Mackie on the
 19 phone in January?

20 A. I remember that the -- I believe -- I could
 21 say that the point of the conversation was
 22 to -- to get a -- an accurate survey of what
 23 information, what format, anything else that
 24 might be includable -- I know that's not a
 25 word but, you know, might be best included

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1 with the -- the media we'd already
 2 established was relevant to the -- to the
 3 case. Like is there any -- is -- is there
 4 anything else that you have that appears to
 5 be related to this directly that you would
 6 like to -- to mention? And I think -- I
 7 think that there was only -- there were
 8 things that were related to my father's work
 9 in that everything was related to his work,
 10 like, you know, certain -- certain statements
 11 where the -- the business is mentioned like
 12 as a -- like taxes, things like that, but
 13 nothing -- you know, nothing specific. I
 14 don't -- I don't recall.

15 Q. Do you recall having conversations with
 16 Mr. Speas and Ms. Mackie about the fact that
 17 information about your father's taxes were
 18 included in these materials that you were
 19 discussing producing to them?

20 A. We did not discuss specifically taxes. I
 21 had -- we were -- it -- it was established
 22 already that this media contained really a --
 23 a masala of -- of -- of data that was my
 24 personal data, my father's personal data, my
 25 father's work data, and, frankly, even my

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1 work data. There was stuff relevant to my
 2 work as well as my personal life on all of
 3 them and that it was very -- it was -- I
 4 think when I said personal that that pretty
 5 much covered everything nonre- --
 6 specifically North Carolina redistricting
 7 related. What I'm saying is I don't remember
 8 saying specifically, his tax returns are on
 9 this. I'm pretty sure I never said that.
 10 I -- we just -- when -- when we discussed the
 11 fact that it was all mingled, personal and
 12 work, that I -- I think that was implied that
 13 was covered.

14 Q. If I understand your testimony, you discussed
 15 with Mr. Speas and Ms. Mackie that within the
 16 materials you were providing to them was both
 17 data related to your father's work as well as
 18 personal data with regards to your father and
 19 personal data for your mother and personal
 20 data for yourself, correct?

21 A. Correct.

22 Q. Do you recall what, if anything, Mr. Speas or
 23 Ms. Mackie said in response to you sharing
 24 with them that this data was commingled and
 25 contained --

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1 A. They addressed it without -- I don't think I
 2 even had to really specify what, I think,
 3 seemed obvious and that is that obvious -- I
 4 wouldn't expect to see a lot of personal data
 5 suddenly appearing in this matter because
 6 their understanding of the directive to them
 7 was that only files that were explicitly,
 8 obviously North Carolina redistricting during
 9 this period of time related would even be
 10 looked at, much less entered into evidence.
 11 That was their understanding at that time.
 12 Q. And when you say that was their
 13 understanding --
 14 A. That's what they told me their understanding
 15 was.
 16 Q. Did you have any conversations with
 17 Ms. Mackie without Mr. Speas on the line?
 18 A. Yes.
 19 Q. How many conversations have you had with
 20 Ms. Mackie?
 21 A. I don't know. Three, maybe four. It was
 22 very -- again, many of these conversations
 23 weren't much more than just touch base,
 24 here's what we're doing, we're doing the
 25 research on this, we will get back to you,

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1 just, you know, polite -- if it had been a
 2 while or if I called and left a message,
 3 like, you know, have you found out whether or
 4 not X, X, X, then it was -- a lot of this was
 5 voice mail. I don't honestly -- I can't tell
 6 you exactly how many conversations and many
 7 of them were very brief, like just an attempt
 8 to schedule a phone call or something.
 9 Q. Did you have any e-mail communications with
 10 Ms. Mackie?
 11 A. I did and I -- the -- the -- what pops into
 12 my mind instantly is she e-mailed me the
 13 address to which I -- when it was established
 14 that I was not going to be able to get to
 15 Raleigh to actually produce the -- the
 16 evidence as per the subpoena -- because that
 17 was my original intention because I was back
 18 and forth, you know, helping my mother
 19 between my work in Kentucky and -- and -- and
 20 visiting and helping her with -- with her
 21 matters. But it -- it -- it became
 22 increasingly clear, one, that I wasn't going
 23 to make it to Raleigh soon enough to -- to --
 24 to -- to -- to get this produced and, two, I
 25 think they -- that they had already said that

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1 it was going to a third party anyway and that
 2 it would be basically not even handled by
 3 them. It would go directly to a third party
 4 anyway, so it would probably be just as well
 5 that I mail it directly to that third party
 6 for the -- the forensic IT expert really is
 7 what my understanding was. I don't remember
 8 the exact words they used, but the idea that
 9 this would be someone that could say, this is
 10 how it was when we received it and could
 11 confirm things like that none of the files
 12 had been altered.
 13 Q. I thought you testified earlier that you did
 14 not mail the materials directly to a
 15 third-party vendor; is that correct?
 16 A. I mailed them to -- I mean, I thought that
 17 Poyner Spruill -- no, not Poyner Spruill. I
 18 mean --
 19 Q. Is it your understanding that you thought --
 20 A. Yes.
 21 Q. -- Arnold & Porter was a third-party vendor
 22 when you sent them the material?
 23 A. Vendor? No. Just another -- a different
 24 attorney. I said an attorney in D.C. who is
 25 a forensic expert on IT essentially.

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1 Q. Okay.
 2 A. I don't remember the exact words, but that
 3 was the understanding that I took away from
 4 it, that they felt that it would be a -- a --
 5 a better -- I don't know how to put it. I
 6 don't -- I don't have, as my father would
 7 call it, the legalese to -- to repeat exactly
 8 what was said. I did not ever get the
 9 impression this was a vendor. My
 10 understanding this was still a lawyer but
 11 that this was somebody who specialized in
 12 this sort of thing.
 13 Q. Okay. Approximately how many e-mail
 14 communications did you have with Ms. Mackie?
 15 A. Not very many. I remember that she gave me
 16 the address and then she had said that if I
 17 was having trouble -- at a certain point
 18 because I was having trouble finding a -- a
 19 FedEx office close to my house, and also, for
 20 a brief period of time, you know, the --
 21 it -- it was about a hundred dollars to ship
 22 and we had a brief discussion about how I
 23 would be reimbursed and I said, well, I'll
 24 have to wait till Friday because, you know,
 25 my paycheck was clearing and I didn't want to

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1 spend that money in advance. So, you know,
 2 stuff like that. It was very much just how
 3 was I going to actually achieve getting it in
 4 a box and getting it to that party. So I
 5 don't know exactly how many exchanges we had
 6 over that.

7 Q. I know we talked about your text messages
 8 with Mr. Speas. Did you have any e-mail
 9 communications with Mr. Speas?

10 A. I don't know that I had a specific e-mail
 11 communication with Mr. Speas. I -- I think
 12 he was maybe CC'd on a couple of the things
 13 or if not all the things that -- anything --
 14 like I said, I was -- I was very quickly
 15 aware of the fact that Caroline and Eddie
 16 were the attorneys, so, again, I'm accustomed
 17 to working with teams of lawyers where
 18 everybody is CC'd on everything relevant. So
 19 I don't know how many of them were. I just
 20 remember seeing who was on the CC list and --
 21 like, for example, when I saw the motion, I
 22 noticed Mark Braden. I was like, oh, hey,
 23 hi, Mark.

24 Q. In your -- you've testified in the
 25 conversations that you've had with Ms. Mackie

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1 and as well as with Mr. Speas that they've
 2 mentioned doing research. Did they say
 3 specifically what type of research they were
 4 doing?

5 A. As to the relevance and admissibility of
 6 this -- potential relevance and admissibility
 7 of this evidence. Also, they -- they were --
 8 you know, they were very polite and -- and
 9 really wanted to make sure that I didn't feel
 10 that they were pulling this out of me or that
 11 I was on the spot. They were sensitive about
 12 the fact that my father had very recently
 13 passed and they were just, I mean, like
 14 attorneys are, you know, careful, you know,
 15 just polite. They didn't -- they didn't want
 16 to make me feel like I was under any pressure
 17 or -- I don't know how to put it best. I
 18 think -- is my -- am I getting my point
 19 across? I don't know.

20 Q. When you -- at what point in time did you
 21 make the decision that you were going to turn
 22 over to Arnold & Porter these hard drives and
 23 thumb drives? I know you said you originally
 24 had a plan that you were going to hand
 25 deliver them in Raleigh and couldn't do that.

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1 A. At what point did I make the decision to --
 2 did we make the decision to mail them --

3 Q. No.

4 A. -- or --

5 Q. Earlier in the process. At what point did
 6 you say, yeah, I'm going to give you -- I'm
 7 comfortable giving you all of this stuff, you
 8 can have it?

9 A. Well, honestly, I wouldn't have brought it up
 10 if I wasn't comfortable with the idea that I
 11 would eventually give it to somebody.

12 Q. So is it fair to say when you had your
 13 initial communication with Mr. Speas, at that
 14 point in time you already intended and
 15 planned to provide them if they wanted it the
 16 hard drives and the thumb drives?

17 A. Yes.

18 Q. Have you had conversations with anyone else
 19 at Poyner Spruill besides Edwin Speas and
 20 Ms. Mackie?

21 A. No.

22 Q. Is there anything you discussed with
 23 Ms. Speas [sic] or Ms. Mackie in your
 24 communications with them that we haven't
 25 already covered?

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1 A. I really don't think so, no. Maybe -- maybe
 2 somebody said something about the weather but
 3 nothing -- certainly nothing relevant.

4 Q. Other than exchanging of general pleasantries
 5 on the communications that you've had with
 6 Ms. Speas and Ms. Mackie, have we discussed
 7 the substance of the communications that
 8 you've had with them?

9 A. Yes.

10 Q. Have you had any communications with Stanton
 11 Jones with Arnold & Porter before today?

12 A. Phone call.

13 THE WITNESS: Were you -- yes, that
 14 was --

15 A. I'm sorry. I don't remember all of the
 16 names.

17 THE WITNESS: When you called and --
 18 and said, I have a room full of attorneys --
 19 it's, you know, a colloquialism -- that
 20 was -- what day was that?

21 A. Last week before the weekend. The Thursday,
 22 I think it was, there was a conference call
 23 where we -- where it was -- it was dropped
 24 that there would very likely be a deposition
 25 to authenticate.

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1 Q. Last Thursday you had a conference call with
 2 Mr. Jones. Was Mr. Sparks on the --
 3 A. Yes.
 4 Q. -- call as well? Who else was on the call,
 5 if anyone?
 6 A. I -- Caroline definitely and --
 7 THE WITNESS: Eddie, were you part of
 8 that, too?
 9 A. No. Okay.
 10 Q. It's only if you recall.
 11 A. I don't. I -- I -- I remember asking for the
 12 list, but I was in the car and --
 13 MR. JONES: I'll -- I'll just say we're
 14 looking blankly at you because --
 15 MS. SCULLY: Yes.
 16 MR. JONES: -- you have to answer based
 17 on your recollection.
 18 THE WITNESS: I know.
 19 MR. JONES: You're not allowed --
 20 THE WITNESS: I know. It's --
 21 MR. JONES: -- to ask us questions.
 22 THE WITNESS: It's -- it's -- I --
 23 MR. JONES: So I don't --
 24 THE WITNESS: I --
 25 MR. JONES: And we're not trying to be

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1 rude.
 2 BY MS. SCULLY:
 3 Q. It's an un- --
 4 A. Sometimes I forget that it's not --
 5 Q. And it's an unnatural --
 6 A. -- a casual conversation.
 7 MR. JONES: Yes.
 8 BY MS. SCULLY:
 9 Q. Right.
 10 A. This is -- I honestly don't recall the names
 11 of -- of everyone that was involved. I do
 12 remember because I said, hi, Caroline --
 13 because I had spoken to her before. And I
 14 think that the other names were names that I
 15 did not offhand know so...
 16 Q. So to the best of your recollection, on the
 17 call was Stanton Jones, Caroline Mackie, and
 18 Mr. Sparks. There may have been a few
 19 additional individuals whose names you can't
 20 recall and you didn't recognize at the time?
 21 A. Yes.
 22 Q. You were in a car when you received the call
 23 you said, yes?
 24 A. Yes.
 25 Q. Approximately how long did the telephone call

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1 last?
 2 A. It -- it -- it's hard to say because my -- my
 3 Bluetooth connection with my car kept
 4 dropping calls so there were -- there were a
 5 number of -- of drops. There was -- at one
 6 point I even continued -- I must have gone on
 7 for at least a minute or two before I
 8 realized that there was no one on the other
 9 end. Basically, it was just about how I
 10 came -- the same set of questions that you
 11 asked today, basically, how did I come by it,
 12 making -- you know, was I -- was it given to
 13 me? Yes. All of that. That -- and I -- you
 14 know, I spoke a lot about -- actually, in
 15 that phone call I ex- -- I spoke a lot about
 16 the importance of -- of my father's work and
 17 how it was a very -- it seemed to me a very
 18 pertinent matter. And I explained at that
 19 time that I had throughout my young life
 20 been as an only child very involved in --
 21 involved in that when my father had a
 22 PowerPoint presentation that he had just
 23 designed for the state legislators, he would
 24 say (indicates). He -- I -- at age 11 I
 25 think he felt that I was about at that level.

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1 If you can understand this, then I've done --
 2 I've done my job. And -- and any -- any
 3 attempts that he made to -- to -- to make the
 4 matter understandable to someone who wasn't
 5 in, you know, cartography and demographics,
 6 he would often test that on me to see because
 7 I knew more probably than your average
 8 11-year-old but still wasn't, you know, like
 9 one of the programmers. So he thought that
 10 if -- if it was clear to me, that that would
 11 be a good measure of if he, you know,
 12 summarized it accurately. So, you know, I
 13 did a little bit of -- of -- of, I don't
 14 know, sort of anecdotal tales about what it
 15 was like growing up in -- in a -- inside the
 16 beltway as it were.
 17 Q. Would you say the call lasted more than an
 18 hour?
 19 A. I don't think it was more than an hour, no.
 20 It was about -- as -- as far as the amount of
 21 time that I actually spent on the phone,
 22 closer to 45 minutes. I mean, I -- as best I
 23 can recall. I honestly was kind of trying to
 24 find a place to park where people weren't all
 25 close by. I had -- you know, wasn't really

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1 familiar with the area. I just wanted to get
 2 somewhere so I wasn't going to be talking and
 3 driving at the same time.
 4 Q. Did you have any in-person meeting with
 5 Mr. Jones or Mr. Speas in advance of today's
 6 deposition?
 7 A. Nope. This is the first time I've seen
 8 either of them.
 9 Q. Prior to today's deposition had you ever seen
 10 the photographs that were marked as Exhibit
 11 2?
 12 A. No.
 13 Q. Have you had any other communications with
 14 Mr. Jones besides this telephone conversation
 15 we were talking about that occurred last
 16 Thursday?
 17 A. No. No. Messages about everything have been
 18 coming to me through my attorney.
 19 Q. In your communications with Mr. Speas and
 20 Ms. Mackie, at what point in time did either
 21 Ms. Speas or Ms. Mackie address the actual
 22 issuance of a subpoena?
 23 A. I don't think -- I honestly don't think
 24 that -- I'm not sure that I even spoke to
 25 them directly in advance of -- well, I think

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1 that -- that -- that it was Jane who
 2 mentioned that they wanted to give me the
 3 heads-up that there would be -- that that
 4 would be out and -- because I had mentioned
 5 that the Geographic Strategies computers had
 6 been taken already by my father's business
 7 partner, I think they mentioned to me that
 8 there was a subpoena issued to Dale, to
 9 Dalton Oldham, but then at that point it
 10 was -- I asked questions like, will I
 11 theoretically get this back?
 12 Q. Uh-huh.
 13 A. And they said yes. And I was just trying to
 14 get an idea of -- of what their journey was
 15 going to be, you know, considering that it
 16 was my property. And it was mostly at that
 17 point discussion about just, you know,
 18 literally where they should be sent and --
 19 and all of that.
 20 Q. Who mentioned to you that a subpoena was
 21 issued to Dale Oldham?
 22 A. I don't remember whether that was Eddie or
 23 Caroline.
 24 Q. Were you surprised that a subpoena was issued
 25 to Dale Oldham?

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1 A. No. No.
 2 Q. In what context did they bring up that a
 3 subpoena was issued to Dale Oldham?
 4 A. I think it was when I, again, had said
 5 something about -- I don't know. I felt like
 6 I didn't want to promise that any of this
 7 was -- was relevant or new because -- and I
 8 kept -- I really did genuinely believe that
 9 because of the fact that Dale had had this
 10 repeated conversation, this repeated
 11 interaction with my father and his -- you
 12 know, his possessions that everything that
 13 could possibly be at all pertinent had
 14 already been collected.
 15 Q. Did either Mr. Speas or Ms. Mackie tell you
 16 that Dale Oldham had produced materials in
 17 response to a subpoena?
 18 A. No. I -- I did ask.
 19 Q. And what did they say?
 20 A. And I think it was Caroline that said, he's
 21 refusing this -- to accept service. And I
 22 said, that's the Dale I know.
 23 Q. So it didn't surprise you that Mr. Oldham was
 24 not responding to the subpoena?
 25 A. That's correct. It's --

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1 MR. SPARKS: Objection --
 2 THE WITNESS: Oh, yeah.
 3 MR. SPARKS: -- mischaracterization.
 4 THE WITNESS: Yeah.
 5 MR. SPARKS: Go ahead.
 6 A. I -- I would say nothing -- nothing surprises
 7 me with attorneys. I -- again, you know, my
 8 father did not -- no offense to any -- any
 9 esquire here, but he did not have a very
 10 reverential attitude towards the whole
 11 process. He said something about that --
 12 along with like a -- a little quip like with
 13 legislation -- you know, legislation is like
 14 sausage, you -- you shouldn't watch it being
 15 made. You know, I think he felt the same
 16 about litigation so -- he --
 17 Q. You un- --
 18 A. -- often used to say that Dale was a very --
 19 very -- a good strategist.
 20 Q. You understood at the time you were speaking
 21 with Mr. Speas and Ms. Mackie that they had
 22 been unable to obtain from Mr. Oldham records
 23 relating to your father's work --
 24 A. Only --
 25 Q. -- correct?

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1 A. -- because I --
 2 THE WITNESS: I'm sorry.
 3 MR. SPARKS: Objection,
 4 mischaracterization. And just to be specific
 5 and not to have a talking -- she said that
 6 her -- what she was told is he never accepted
 7 service so -- and I'm not trying to shape
 8 testimony. That's just what she said.
 9 A. Yes. I asked because I was curious because
 10 I -- again, the same reason I was curious
 11 when I saw all of these files and had a
 12 minute to look at them, really my -- my
 13 interest in them was a bit more on the
 14 academic end than anything else.
 15 Q. You understood based on your conversations
 16 with Mr. Speas and Ms. Mackie that they had
 17 not received any of your father's business
 18 records from Mr. Oldham in the litigation,
 19 correct?
 20 MR. JONES: Objection. It's been asked
 21 and answered.
 22 A. It was --
 23 MS. SCULLY: It hasn't been answered.
 24 A. -- my --
 25 Q. You may answer.

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1 A. -- understanding based on a response to my
 2 direct question that Dalton Oldham was
 3 refusing to accept service on the subpoena.
 4 Q. And as a result of his refusing to accept
 5 service, you understood he had not turned
 6 over any documents, correct?
 7 A. Yes.
 8 Q. Did you retain copies of any of the hard
 9 drives and thumb drives that you produced to
 10 Arnold & Porter in response to the subpoena?
 11 A. Yes.
 12 Q. Did you make copies of all of the hard drives
 13 and thumb drives?
 14 A. I was not actually able to copy everything
 15 because I did not at that moment have
 16 adequate storage.
 17 Q. What -- which files did you copy and
 18 maintain?
 19 A. I was really principally concerned with --
 20 well, first of all, I -- I did -- there was
 21 one hard drive I know that had many, many,
 22 many, many backups of the same hard drive, so
 23 I copied, you know, the first one and the
 24 last one only knowing that that was going to
 25 be redundant and I was not -- I was not, I

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1 didn't feel, charged with maintaining the
 2 forensic integrity so I was just -- I wanted
 3 to make sure that I had -- that I had
 4 everything in that it was mine, in that it
 5 was -- I don't have a lot of -- of memento
 6 from my father. I was kind of hoping that I
 7 would be able to preserve this for posterity
 8 if nothing else. And knowing how these
 9 things work, even though it was clear that
 10 the -- that the intention was that these
 11 things would be returned to me, that's
 12 another thing my father taught me. You don't
 13 count on it.
 14 Q. The copies that you made of the -- some of
 15 the materials that you provided to Arnold &
 16 Porter, where are those copies maintained?
 17 A. I have those at home in my home in Kentucky
 18 and I have it on a couple of my own thumb
 19 drives.
 20 Q. And where are the thumb drives kept?
 21 A. In the same drawer where I keep pens,
 22 pencils, stuff like that.
 23 Q. Is the drawer in your home in Kentucky? I'm
 24 trying to understand --
 25 A. Yes.

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1 Q. -- physically --
 2 A. Yes.
 3 Q. -- where it is.
 4 A. Yes. I'm sorry. I didn't mean to -- I -- I
 5 wasn't sure what you were asking. Yes,
 6 they're -- they're in Kentucky.
 7 Q. So all of the copies that you've made are
 8 maintained at someplace in your home in
 9 Kentucky, correct?
 10 A. All of the copies that I made, yes, and --
 11 Q. Correct?
 12 A. Except, of course -- now, I have some copies
 13 of the photographs of me and my children, for
 14 example, on -- on -- on like my laptop that
 15 is -- it's like -- I -- I don't put pictures
 16 as background for desktop, but sometimes I
 17 have little decorative things. I was, again,
 18 so happy to have these pictures again that I
 19 have some of those, but other than that, no,
 20 I -- I tried really to keep it separate. I'm
 21 not, you know -- have more pressing matters.
 22 Q. Have you provided anyone else with any copies
 23 of the materials that you turned over to
 24 Arnold & Porter?
 25 A. Yes. My files, things that were literally

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1 mine, I have shared with colleagues in my
 2 work as a research consultant in criminology,
 3 specifically victimology, specifically with
 4 an emphasis on gender-based violence. So
 5 things that were relevant to our study of --
 6 of anything involving that topic that were
 7 there on note files, those -- mine, yes.
 8 Q. Have you shared with anyone any copies of any
 9 materials that relate to your father or your
 10 father's work?
 11 A. No, other than communication between him and
 12 me on matters that were related to me, but
 13 not -- nothing related to his work.
 14 Q. There was, I understand also, on the files
 15 you provided to Arnold & Porter personal
 16 health information about your mother,
 17 correct?
 18 A. I -- I honestly don't know. I didn't really
 19 examine all of the files that appeared to be
 20 health related to see which of them were Mom
 21 and which of them were Dad, and honestly,
 22 right at this moment I -- I don't -- I don't
 23 know that I really observed -- okay. I think
 24 there was like a HIPAA form, but one of them
 25 was mine and I know there are medical records

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1 of mine on that hard drive, one of them.
 2 Several, I think. I have some HIPAA release
 3 forms that I scanned and sent to hospitals,
 4 doctors, to obtain medical records on myself
 5 and my children. My children's medical
 6 records are part of that archive, vaccination
 7 records, things like that.
 8 Q. Sitting here today, do you know if -- in the
 9 materials that you provided to Arnold &
 10 Porter if there was personal health
 11 information related to your mother in those
 12 materials?
 13 A. I don't know.
 14 Q. Could have been; you just don't know?
 15 A. Exactly.
 16 Q. Other than the information related to you
 17 personally that you provided to some of your
 18 coworkers, have you provided copies of
 19 information -- this information that you
 20 produced to Arnold & Porter to anybody else?
 21 A. I'm -- I'm sorry. Clarify the question
 22 again.
 23 Q. You've testified that you provided some of
 24 your personal information that is contained
 25 within the materials you provided to Arnold &

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1 Porter, correct?
 2 A. Yes.
 3 Q. I'd like to understand if -- putting that
 4 information aside --
 5 A. Uh-huh.
 6 Q. -- have you provided any other information
 7 from the materials you provided to Arnold &
 8 Porter to anyone else?
 9 A. No.
 10 Q. You mentioned that Mr. Speas and Ms. Mackie
 11 talked to you about a subpoena that they'd
 12 issued to Dale Oldham. Did either Mr. Speas
 13 or Ms. Mackie inform you that they had issued
 14 a subpoena to your mother as well as to the
 15 estate of your father?
 16 A. Yes.
 17 Q. When did they first tell you about that
 18 subpoena that they had issued?
 19 A. I think almost immediately after it was
 20 issued.
 21 Q. Did they tell you in advance of issuing it
 22 that they were going to issue it?
 23 A. I don't think so. I don't honestly remember.
 24 No. I think it was they had just issued it.
 25 Q. Did they tell you why they were sharing that

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1 information with you?
 2 A. Because they knew that I was in constant
 3 communication with my mother and they --
 4 again, this was all -- there was -- there's a
 5 lot of talk about being sensitive to the fact
 6 that my father had recently deceased and I
 7 think that the -- the impression was that
 8 they wanted me to know so that I -- so that
 9 my mother wouldn't, you know, see another
 10 legal document and think that it was, you
 11 know, something that she was going to be, you
 12 know, directly -- I don't know. That the
 13 incompetency got her very understandably --
 14 she felt very put upon, very examined, and --
 15 and I think the idea was -- I think I had
 16 told them that they -- that I would like them
 17 to tell me at that point so that I could know
 18 that my mother was not going to be scared
 19 when -- when she received it and think, you
 20 know, she's -- she has some memory -- memory
 21 issues as is normal for someone her age. So
 22 they knew that I was very sensitive to that
 23 and that she -- even if I had told her, which
 24 I didn't, that she might not remember that --
 25 that that's what that was. So that was

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1 really pretty much it, so that -- that I
 2 would -- that my mother wouldn't be caught
 3 off guard and -- and be frightened and that I
 4 would have a chance to -- to, once again,
 5 clarify with her what was going on and that
 6 that wasn't going to be a -- a problem for
 7 her.
 8 Q. And when you say it wasn't going to be a
 9 problem for her, what do you mean by that?
 10 A. As opposed to the proceedings that are
 11 directly -- that were directly challenging
 12 her competence, which was very much a problem
 13 for her.
 14 Q. Did you have conversations with either
 15 Mr. Speas or Ms. Mackie about the fact that
 16 your mom had these memory problems?
 17 A. No, not specifically the memory problems. I
 18 think it was more casual like, you know,
 19 she's -- she's -- her emotions are very raw
 20 right now. She's on edge from everything
 21 that's been happening. And I think really it
 22 was more, again, in casual conversation
 23 the -- neither Eddie nor Caroline was
 24 expressing any type of interrogatory interest
 25 in -- in the other matter. We really -- our

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1 conversation really was very much centered on
 2 this whole -- this, this matter, those
 3 materials, and my father in his -- in the
 4 context of his work as a political
 5 demographer.
 6 Q. Did you have any conversations with Mr. Speas
 7 or Ms. Mackie about whether your mom would --
 8 had possession of any materials that would be
 9 responsive to a subpoena?
 10 A. Yes, in that I -- basically, I -- I had said
 11 that I -- that between Dale having taken the
 12 work stuff and I taken the rest of what I
 13 saw, then that all -- all that remained in
 14 her home was -- was a personal PC that was
 15 really relatively new. I don't think that --
 16 that my parents even had that PC for more
 17 than a few weeks before my father died, and
 18 it did not -- it did not appear to me -- and
 19 the reason that I was familiar at all with
 20 the content of my mother's -- now my mother's
 21 personal computer is because she'd had some
 22 issue with a virus shortly before I had come,
 23 so I had -- along with the -- with the -- the
 24 gentleman that she had -- had come in to help
 25 her make sure that her -- her PC was secure,

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1 I just checked around to see if I saw
 2 anything untoward I -- looking for, you
 3 know --
 4 Q. So you shared -- if I understand your
 5 testimony correctly, you had shared with
 6 Mr. Speas and Ms. Mackie that between Dale
 7 Oldham having the two computers of your
 8 father and you having the hard drives and the
 9 thumb drives that your mother no longer had
 10 possession of any of your father's electronic
 11 work files, correct?
 12 A. I had said that if there was -- I remember
 13 that I was, again, like a -- like a lawyer,
 14 you know, I can't say for sure, but it looked
 15 to me that the only thing that could possibly
 16 even exist in her possession would be most
 17 certainly a duplicate of one or two files, a
 18 duplicate of something that was already in
 19 the matter, i.e., that -- that there might be
 20 one or two of the last things that he -- he
 21 mentioned to himself on that PC but that --
 22 that -- at first glance -- because also, I
 23 was looking for things relevant to me,
 24 photographs of the family, things that I
 25 might have missed, but it appeared as though

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1 there really wasn't anything much new at all
 2 on -- on -- on my mother's hard drive. So
 3 I -- I did not say for sure that I knew
 4 because I -- I didn't feel confident. I
 5 wasn't even in Raleigh at that time. I just
 6 said, as far as I know, there is nothing on
 7 her personal computer and I don't believe
 8 there's anything else much there. And I said
 9 that I would -- that I would probably be
 10 better able to confirm it when I was next in
 11 Raleigh.
 12 And in answer to your next question, no,
 13 I haven't really been -- my mother and I have
 14 not really been -- that hasn't been our
 15 focus. I only recently found out that there
 16 was even going to be a deposition or that --
 17 so I haven't actually gone through to --
 18 to -- to confirm it, but that's my
 19 understanding and that's her understanding,
 20 my mother's understanding, as far as I know,
 21 too.
 22 Q. I want to make sure I understand your
 23 testimony. So you --
 24 MR. SPEAS: Ms. Scully, your questions
 25 about my conversations with this witness have

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1 now exceeded the length of those
 2 conversations. I really think it's time you
 3 moved on to something else.
 4 BY MS. SCULLY:
 5 Q. In your communications with Mr. Speas, did
 6 you share with him that you would take it
 7 upon yourself to look to determine if your
 8 mom in her files had information related to
 9 your father's work?
 10 A. I really -- it was not -- I don't know -- I
 11 mean, I wasn't giving testimony. It was just
 12 a casual conversation where I said, as far as
 13 I know, there's really nothing there. I
 14 can't say for sure because I'm not there, but
 15 I'll ask my mother and I'll look just like to
 16 see if there's a new computer sitting on the
 17 table when I get there. I mean, really,
 18 there was very nonspecific tone, but I
 19 expressed what I'll go ahead and express
 20 again and that is that I really think that I
 21 had gotten the -- the survey of everything
 22 that could possibly be relevant and it was
 23 already in the hands of Poyner Spruill, I
 24 guess. No. Which one? I'm -- I'm getting
 25 all of you confused. Yes. Okay. Arnold

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1 Porter.
 2 Q. Did you at any point in time actually go
 3 through your mother's files to determine if
 4 she had any information that may be
 5 responsive to the subpoena that was served on
 6 her?
 7 MR. SPARKS: Objection. That has been
 8 asked and answered.
 9 A. Yes, it has. It --
 10 Q. Did you?
 11 A. -- really has. I -- I said that I went
 12 through her files before -- not her files --
 13 again, the personal PC principally to look
 14 for any other pictures -- honestly, pictures
 15 of family members was specifically what I was
 16 looking for. As I did that survey, I didn't
 17 notice anything else work related -- my
 18 father's work related. So did I go through
 19 it with the idea that I was looking for stuff
 20 for them? No. Did I go through it? Yes.
 21 Q. Did you have a conversation with your mother
 22 about the subpoena that was issued by Poyner
 23 Spruill on her?
 24 A. Yes. A conversation is a little bit an
 25 exaggeration. I basically said, you don't

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1 really have to be worried about this. This
 2 is -- this is -- this is about stuff that you
 3 gave me, but just -- she's used to the idea
 4 that lawyers like to cross their T's and dot
 5 their I's, and that's the way I put it to her
 6 and she understood it that way, and that was
 7 the end of the matter as far as she was
 8 concerned. I really didn't want to -- I
 9 mean, she -- she's bored with this. She
 10 spent 52 years being married to my father.
 11 MR. JONES: We've --
 12 BY MS. SCULLY:
 13 Q. It was your ex --
 14 MR. JONES: We've been going --
 15 BY MS. SCULLY:
 16 Q. It was your expectation that your mother
 17 didn't have any materials to produce and so
 18 you told her, you don't have to worry about
 19 it because you have no materials to produce
 20 in response to the subpoena, correct?
 21 MR. SPARKS: Objection,
 22 mischaracterization. Go ahead and answer the
 23 question.
 24 A. I'm really not trying to be evasive. I don't
 25 understand what part of your question I

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1 haven't answered yet. Maybe you could
 2 clarify what you would like to know so that I
 3 can answer --
 4 Q. Did you --
 5 A. -- your question.
 6 Q. -- tell your mother that there -- there were
 7 no materials that she needed to produce in
 8 response to the subpoena?
 9 A. You know what, no, I didn't put it that way
 10 because -- I just told her not to worry about
 11 it because my mother's really had enough of
 12 all of this and I didn't -- really, it was --
 13 it was pointless to -- to trouble her at that
 14 moment because we were actually discussing
 15 the funding of her trust, whether or not she
 16 was going to be able to access funds to come
 17 and visit me in Lexington. That was really
 18 the meat of our conversation and I -- as she
 19 was accustomed to sort of letting things go
 20 by with my father's work as married couples
 21 often don't pay a lot of attention to each
 22 other's work, it was in that tone. So I
 23 don't -- I'm really just trying to be
 24 accurate.
 25 Q. How about --

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1 A. I don't know how important it is...
 2 MR. SPARKS: Do you have any more?
 3 THE WITNESS: No.
 4 MR. SPARKS: Okay. We need to take a
 5 break. She's -- she's tired. Thank you.
 6 THE VIDEOGRAPHER: Going off the
 7 record. The time is 1:50 p.m.
 8 (Whereupon, there was a recess in the
 9 proceedings from 1:50 p.m. to 1:57 p.m.)
 10 THE VIDEOGRAPHER: Going back on the
 11 record. The time is 1:57 p.m.
 12 BY MS. SCULLY:
 13 Q. Ms. Hofeller, have you had any communications
 14 with a David Gersch?
 15 A. Not that I can recall, no.
 16 Q. Have you had any communications with someone
 17 named Elizabeth Theodore?
 18 A. No.
 19 Q. Any conversations or communications with
 20 Daniel Jacobson?
 21 A. No.
 22 Q. Any conversations that you can recall with
 23 anyone that works for Arnold & Porter besides
 24 Mr. Stanton Jones, the conversation we've
 25 already discussed?

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1 A. No.
 2 Q. Any conversations with anyone working for
 3 Poyner Spruill besides the conversations that
 4 you've had with Mr. Speas and Ms. Mackie?
 5 A. No.
 6 Q. Have you had any conversations or
 7 communications with Mark Elias?
 8 A. No.
 9 Q. Have you had any conversations or other
 10 communications with someone named Aria C.
 11 Branch?
 12 A. No.
 13 Q. Have you had any communications or other
 14 written communications with Abha Khanna?
 15 A. No.
 16 Q. Have you had any communications with anyone
 17 working for Perkins Coie?
 18 A. No.
 19 Q. Have you had any communications with anyone
 20 at Common Cause besides the communications
 21 with Ms. Pinsky and the communication with --
 22 MR. JONES: Mr. Phillips.
 23 BY MS. SCULLY:
 24 Q. -- Bob Phillips?
 25 A. No.

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1 Q. Are you a member of Common Cause?
 2 A. No.
 3 Q. Have you ever worked for Common Cause?
 4 A. No.
 5 Q. Have you ever told anyone that you were
 6 working for Common Cause?
 7 A. No.
 8 Q. Have you ever received any money from Common
 9 Cause?
 10 A. No. Oh, you know, actually, I think there
 11 was reimbursement for the FedEx --
 12 Q. And the reim- --
 13 A. -- in the form of a check.
 14 Q. The reimbursement for the FedEx -- and you're
 15 referring to the FedEx for shipping the
 16 documents to Arnold & Porter, correct?
 17 A. Yes. I provided them with a receipt and they
 18 provided me with a reimbursement for that
 19 amount.
 20 Q. Other than the reimbursement for the shipment
 21 for the box that you sent via FedEx to
 22 Arnold & Porter, have you received any other
 23 monies from Common Cause?
 24 A. No compensations, no considerations, no
 25 money.

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1 Q. Have you at any point in time received any
 2 monies from anyone at Poyner Spruill?
 3 A. No.
 4 Q. Have you received any monies at any point in
 5 time from anyone at Arnold & Porter?
 6 A. No.
 7 Q. Have you received monies at any time from
 8 anyone working for Perkins Coie?
 9 A. No.
 10 Q. You've talked about the review of the
 11 materials that you have conducted of the hard
 12 drives and the thumb drives. At any point in
 13 time did anyone else have access to and
 14 review those materials before you produced
 15 them to Arnold & Porter?
 16 A. No.
 17 Q. Did -- you testified that the materials that
 18 you took possession of from the residence
 19 where your father and mother resided -- you
 20 took those materials -- those electronic
 21 materials to your home in Kentucky --
 22 A. That's correct.
 23 Q. -- before --
 24 A. I'm sorry. I --
 25 Q. -- before you produced them to Arnold &

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1 Porter approximately March 13th, 2019,
 2 correct?
 3 A. Correct.
 4 Q. Has anyone else resided in your home in
 5 Kentucky during that period of time between
 6 October 2018 and March 13th, 2019?
 7 A. No. I live alone. Ditched the husband.
 8 First time in my life, actually, I have my
 9 own place. It's wonderful. I love it.
 10 Q. Prior to sending the hard drives and thumb
 11 drives to Arnold & Porter, did you provide
 12 copies of any of those materials to anyone
 13 else?
 14 MR. JONES: Ob- -- objection. That's
 15 been --
 16 A. I already answered that.
 17 MR. JONES: -- asked and answered.
 18 BY MS. SCULLY:
 19 Q. Was --
 20 A. I already answered that.
 21 Q. I just wanted to clarify if it was prior to
 22 your -- I know you -- you've testified
 23 already that you provided some personal
 24 information to a coworker. Was that prior to
 25 your sending the information to Arnold &

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1 Porter or after?
 2 A. That was prior and after because there was
 3 something else relevant. So, again, my
 4 material, exclusively mine, as in may -- I
 5 sent a copy of one of those pictures to
 6 another one of my colleagues, picture of my
 7 son.
 8 Q. I just wanted to clarify --
 9 A. Yeah.
 10 Q. -- so there wasn't a confusion about whether
 11 the copies were distributed prior to or after
 12 the -- the release of the information to
 13 Arnold & Porter.
 14 A. Yeah. I mean, I don't know. I mean, you
 15 know...
 16 Q. You testified earlier that before you made
 17 the production of the materials to Arnold &
 18 Porter that you did have some conversations
 19 with your mother about the fact that you were
 20 going to produce those materials to Arnold &
 21 Porter, correct?
 22 A. Yes.
 23 Q. Was anyone else present when you had those
 24 communications with your mother?
 25 A. No. I don't think so. I mean, these were

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1 done over the phone. I didn't get the
 2 impression that there was anyone else there
 3 so as far as I know there wasn't, no.
 4 MS. SCULLY: Can I have these marked 3
 5 and 4? 3 is on top, 4 is on bottom.
 6 (HOFELLER EXHIBIT 3 was marked for
 7 identification.)
 8 (HOFELLER EXHIBIT 4 was marked for
 9 identification.)
 10 MR. BRANCH: Thank you.
 11 MS. SCULLY: We're short one.
 12 MR. BRANCH: If you need to --
 13 MS. SCULLY: She has it. It's marked.
 14 MR. JONES: Why don't we give Tom your
 15 copy because --
 16 MR. SPEAS: Yeah.
 17 MR. JONES: -- he doesn't have one and
 18 we can share. So, Tom -- Tom --
 19 A. Okay. I see.
 20 MR. JONES: -- take a --
 21 BY MS. SCULLY:
 22 Q. Oh.
 23 MR. JONES: -- take a copy for each.
 24 MR. SPARKS: Thank you.
 25 A. I see that these are two different --

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1 MR. JONES: We'll share.
 2 MS. SCULLY: Thank you. I thought I'd
 3 made enough copies but apparently not.
 4 MR. SPARKS: It's good. We're good.
 5 Thanks.
 6 BY MS. SCULLY:
 7 Q. Ms. Hofeller, what's just been put in front
 8 of you marked as Exhibit 3 and 4, focusing
 9 first on Exhibit 3, do you recognize Exhibit
 10 3 as a copy of the subpoena that was issued
 11 to your mother, Kathleen Hofeller, on or
 12 about January 15th, 2019?
 13 A. I see that it is, but I don't recognize it.
 14 Q. Had you ever seen -- I know you testified
 15 earlier that you were aware that a subpoena
 16 was issued to your mother in this case. Had
 17 you ever seen a copy of the subpoena before
 18 today?
 19 A. Actually, no.
 20 Q. Exhibit 4 appears to be a copy -- I'll
 21 represent to you is a copy of a subpoena that
 22 was issued to the Estate of Thomas Hofeller.
 23 I know you testified earlier that you were
 24 aware that a subpoena was issued to your
 25 father's estate. Had you ever seen a copy of

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1 the actual subpoena?
 2 A. No.
 3 Q. Put that aside. You testified earlier that
 4 you first learned of your father's passing
 5 in -- I apologize --
 6 A. September 30th.
 7 Q. -- September 30th, 2018. How did you come to
 8 learn of your father's passing?
 9 A. I typed his name into Google and saw the New
 10 York Times article of his obituary.
 11 Q. What had prompted you to search for your
 12 father's name that day?
 13 A. I had a feeling, a hunch something might
 14 be -- and, you know, it would -- I think it
 15 had -- like a few months ago I was aware of
 16 the -- the -- the fact that there was another
 17 set of -- another set of districts in court,
 18 so, I mean, I figured if nothing else, I'd
 19 see if there was anything interesting about
 20 that basically really in my role as a -- as
 21 a -- as a student of -- of -- of political
 22 philosophy and -- and other such things.
 23 But, honestly, I -- I -- I had a hunch that
 24 maybe something was wrong.
 25 Q. Once you found out that your father had

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1 passed away, did you reach out to your
 2 mother?
 3 A. Yes.
 4 Q. Did you ask your mother why she hadn't
 5 contacted you to inform you --
 6 A. I didn't.
 7 Q. -- that your father --
 8 A. No.
 9 Q. -- had passed?
 10 A. No.
 11 Q. And why not? You said you didn't --
 12 A. I didn't need to because I don't believe that
 13 she knew how to reach me.
 14 Q. And -- and why do you say that?
 15 MR. JONES: I'm -- I'm -- I'll object
 16 to this line of questioning. I -- I can't
 17 imagine why the -- the circumstances around
 18 Ms. Hofeller's communications with her -- her
 19 mother relating to her father's death could
 20 possibly have any relevance here. It
 21 seems -- it seems vexatious.
 22 MR. SPARKS: Are you going to instruct
 23 the witness not to answer?
 24 MR. JONES: She's not my witness.
 25 A. I was -- let's see. No, I didn't ask her why

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1 she hadn't contacted me.
 2 Q. Had your father -- had there already been a
 3 funeral service for your father at that point
 4 in time when you learned of his passing?
 5 MR. JONES: Object again. It's -- I
 6 think it's inappropriate.
 7 A. I know as much about it as anyone who read
 8 the New York Times obituary.
 9 Q. I take it you did not attend a funeral
 10 service for your father; is that correct?
 11 MR. JONES: Objection.
 12 A. No.
 13 Q. You testified that you -- earlier that you
 14 had not spoken to your father -- the last
 15 time you'd spoken to your father was July
 16 2014 prior to his passing in August of 2018,
 17 correct?
 18 A. Yes.
 19 Q. Had you followed your father's work in any
 20 way between July 2014 and August 2018?
 21 MR. SPARKS: Now I'm going to object.
 22 It's -- my understanding of this proceeding
 23 is that this is to authenticate things that
 24 she turned over and we're now getting to
 25 personal family matters. I'm going to -- are

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1 we going to continue down this line? If
 2 we're going to continue down this line, I am
 3 going to instruct her not to answer.
 4 MS. SCULLY: Not much further, but I
 5 just want -- it is important. It is relevant
 6 and we can talk outside about whether it's
 7 relevant or not, but I'm not going to talk
 8 about that in front of the witness.
 9 MR. SPARKS: Okay.
 10 MS. SCULLY: I'm simply asking if she's
 11 kept track of --
 12 THE WITNESS: Oh, go on ahead.
 13 MS. SCULLY: -- her father's work.
 14 THE WITNESS: Sorry.
 15 MR. SPARKS: Go ahead and answer that
 16 question.
 17 MR. JONES: Can you repeat it? I
 18 forgot it.
 19 Can you -- can you read back the last
 20 question?
 21 MS. SCULLY: I can reask the question.
 22 BY MS. SCULLY:
 23 Q. Between July 2014 and August 6 -- I'm sorry,
 24 July 2014 and August 16th, 2018, have you
 25 followed any of your father's work?

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1 A. That is a very vague question. Maybe you
 2 could be more specific. I was not in
 3 communication with him. In what way would I
 4 follow his work?
 5 Q. Have -- did you read articles about any work
 6 your father was doing in redistricting
 7 between July 2014 and August 16th, 2018?
 8 A. I quite certainly may have read any number of
 9 the many, many newspaper articles about my
 10 father who was rather well-known including
 11 the one I just mentioned, the New York Times
 12 article that was his obituary. I read that.
 13 Q. Did you read any articles or any statements
 14 made by Common Cause about your father's
 15 work?
 16 A. I do not recall having made note of the name
 17 Common Cause until such point as my father
 18 was already deceased. I really wasn't that
 19 involved.
 20 Q. Ms. Hofeller, have you ever been charged with
 21 a crime?
 22 MR. SPARKS: Objection. Ob- -- this is
 23 totally inadmissible. I mean, this is
 24 absolutely inadmissible. Don't answer that.
 25 Go ahead.

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1 MS. SCULLY: You're going to instruct
 2 her not to answer?
 3 MR. SPARKS: I am instructing her not
 4 to answer that question.
 5 MS. SCULLY: Okay.
 6 MR. BRANCH: Okay.
 7 MS. SCULLY: Oh, did I give you one
 8 that's got any markings on it? I don't think
 9 so.
 10 MR. SPARKS: Here, you can --
 11 MS. SCULLY: That's all right. No,
 12 that's all right. I'll give you one in one
 13 second. Sorry. I just..
 14 THE WITNESS: Oh, more -- you would
 15 have --
 16 MR. SPARKS: Please.
 17 THE WITNESS: Yeah. Okay.
 18 (HOFELLER EXHIBIT 5 was marked for
 19 identification.)
 20 MS. SCULLY: I seem to have lost mine.
 21 I'm going to have this one marked also at the
 22 same time.
 23 (HOFELLER EXHIBIT 6 was marked for
 24 identification.)
 25 MR. BRANCH: Thank you.

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1 MR. JONES: These are 5 and 6?
 2 MS. SCULLY: Yes.
 3 BY MS. SCULLY:
 4 Q. Ms. Hofeller, have you had an opportunity to
 5 review the documents that's been put in front
 6 of you marked Exhibit 5 and Exhibit 6?
 7 A. Let me look quickly at 6. Yes.
 8 Q. Yes.
 9 A. Yeah.
 10 Q. Have you seen the documents marked as Exhibit
 11 5 and Exhibit 6 before?
 12 A. I have never seen this page right here
 13 (indicates).
 14 Q. When you're pointing to this page right here,
 15 which one are --
 16 A. This one on top, the first page --
 17 Q. -- you referring to?
 18 A. -- of Exhibit 5, I have never seen this
 19 before. I have seen the -- the -- this page
 20 is familiar to me.
 21 Q. And when you're saying this page, I just want
 22 to reflect for the record on the document
 23 marked as Exhibit 5, you're referring to the
 24 second page which has the caption, Notice of
 25 Hearing on Incompetence Motion in the Cause

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1 and Order Appointing Guardian Ad Litem?
 2 A. Yes.
 3 Q. Okay. And have you seen the third page of
 4 the document?
 5 A. No.
 6 Q. In the document marked Exhibit 5, the second
 7 page that you've seen, did you see that on or
 8 about October 29th, 2018, that there was
 9 going to be a hearing for your mother
 10 regarding her in- -- whether she was
 11 incompetent or not?
 12 A. On or about.
 13 MR. SPARKS: Ask the question again,
 14 please.
 15 BY MS. SCULLY:
 16 Q. Do you recall when you first saw the second
 17 page of the document marked Exhibit 5?
 18 A. Yes.
 19 Q. When?
 20 A. I think it was a few -- few days later.
 21 Q. A few days later from --
 22 A. After it was filed.
 23 Q. -- when?
 24 A. A few days after it was filed. I mean, I
 25 guess that it was filed on the 29th

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1 considering that this is stamped there.
 2 Q. And --
 3 A. I did not see it on the 29th.
 4 Q. Your recollection is that you recall seeing
 5 the second page of the document marked as
 6 Exhibit 5 a few days after October 29th,
 7 2018, correct?
 8 A. Correct.
 9 Q. The document marked as Exhibit 6 which
 10 states, Petition for Adjudication of
 11 Incompetence and Application for Appointment
 12 of Guardian or Limited Guardian, have you
 13 seen that document before?
 14 A. Yes.
 15 Q. When did you first see that document?
 16 A. A few days after it was filed.
 17 Q. You understood that one of the grounds that
 18 was asserted by the petitioner for seeking to
 19 have your mother found incompetent, if you
 20 refer to the --
 21 A. Yes, I understand --
 22 Q. -- second page --
 23 A. -- what's written here.
 24 Q. You had knowledge of that?
 25 A. I have know- -- I had knowledge of what was

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1 written here when I saw the document.
 2 Q. And when you're referring to what was written
 3 here, you are referring to -- on the second
 4 page under Paragraph 5 there are four grounds
 5 listed as the grounds for seeking to have
 6 your mother found incompetent. You
 7 understood those, correct?
 8 MR. SPARKS: Objection as to
 9 characterization. They're allegations. I
 10 understand that I'm parsing -- I'm being a
 11 lawyer here, but they are allegations and
 12 that -- to the extent that you're saying
 13 they're grounds, they're -- they're verified
 14 or they're -- they're true...
 15 Do you understand they're allegations?
 16 THE WITNESS: I understand that they
 17 are allegations.
 18 BY MS. SCULLY:
 19 Q. I'll reask the question, Ms. Hofeller. Did
 20 you -- you understood -- when you're saying,
 21 I understood what is written here, I'm just
 22 trying to make sure we have agreement on the
 23 record that the here you're referring to are
 24 the four allegations that are set forth on
 25 the second page of Exhibit 6 as the alleged

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1 basis for seeking your -- to find your mother
 2 incompetent, you understood that those were
 3 the grounds that were being alleged, correct?
 4 A. I understood that these were the facts set
 5 forth that the petitioner alleges are
 6 grounds, yes.
 7 Q. One of the facts that were set forth that the
 8 petitioner alleged that were grounds was that
 9 the respondent is believed to be under the
 10 influence of a previously estranged child.
 11 Since appearance of child financial assistant
 12 hired for respondent quit her employment upon
 13 concerns of personal safety based on actions
 14 of -- actions of previously estranged child.
 15 Respondent removed appointed attorney-in-fact
 16 over security of funds.
 17 Did you disagree with those assertions?
 18 MR. JONES: I'll -- I'm going to
 19 object.
 20 A. The --
 21 MR. JONES: I think that you're just --
 22 A. The -- you know what --
 23 THE REPORTER: One -- one at a time.
 24 MR. JONES: Hold on. Hold on. I'm
 25 going to object. I -- I think at this point

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1 you're just harassing the -- the witness.
 2 MR. SPARKS: Yeah.
 3 MR. JONES: She's not my witness so I'm
 4 not going to -- but it seems --
 5 A. This is not for me to say.
 6 MR. SPARKS: I believe the same thing.
 7 I -- I believe the same thing. If -- if you
 8 want to ask about the factual basis of this,
 9 I don't understand how it has anything to do
 10 with something so we're going to take a
 11 break -- or can you answer -- there's a
 12 question on the table. Can you answer the
 13 question?
 14 THE WITNESS: No.
 15 MR. SPARKS: Okay. Let's you and I
 16 talk, please, if we can take a break.
 17 Thanks.
 18 Not you -- not you and I.
 19 THE WITNESS: Oh, good. Excellent.
 20 THE VIDEOGRAPHER: Going off the
 21 record. Time is 2:23 p.m.
 22 (Whereupon, there was a recess in the
 23 proceedings from 2:23 p.m. to 2:36 p.m.)
 24 (HOFELLER EXHIBIT 7 was marked for
 25 identification.)

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1 THE VIDEOGRAPHER: Going back on the
 2 record. The time is 2:37 p.m.
 3 BY MS. SCULLY:
 4 Q. Ms. Hofeller, have you had an opportunity to
 5 review the document that's marked Exhibit 7
 6 that's in front of you?
 7 A. Let me -- let me finish.
 8 Q. Please, take your time. Tell me when you're
 9 ready.
 10 A. Hold on. Get my glasses. Is this -- when
 11 was this filed? What is the date on this? I
 12 don't see the date that it was filed. Is it
 13 on the second page?
 14 Q. It's -- the document is dated on Page 4,
 15 the -- November 5th, 2018.
 16 A. Oh, okay. All right. All right. I've
 17 had -- I've reviewed this.
 18 Q. Ms. Hofeller, my first question is, have you
 19 prior to today seen the document that's
 20 marked as Exhibit 7?
 21 A. I don't believe that I did ever see this one,
 22 no. No.
 23 Q. Were you at any point aware that a guardian
 24 ad litem had been appointed in the
 25 incompetency proceedings related to your

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1 mother?
 2 A. A guardian ad litem?
 3 Q. Yes.
 4 A. As in the guardian ad litem, Erin Riddick?
 5 Q. Yes.
 6 A. At -- ask again. Was I at some point aware
 7 that a guardian ad litem had been
 8 appointed --
 9 Q. Yes.
 10 A. -- at -- yes. Yes.
 11 Q. When did you first become aware of the
 12 appointment of a guardian ad litem?
 13 A. I think that that was part of the original
 14 petition. Yes, it was. Erin Riddick was
 15 appointed guardian ad litem when the petition
 16 was filed. When that was served I was aware
 17 of the fact that a guardian ad litem had been
 18 appointed for my mother.
 19 Q. Did you ever have any communications with
 20 Ms. Riddick?
 21 A. No. She never reached out to me.
 22 Q. Did you ever reach out to Ms. Riddick
 23 directly?
 24 A. No.
 25 Q. Did you ever become aware that Ms. Riddick

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1 had concluded that based on the interview of
 2 the petitioner's attorney and a review of
 3 your mother's medical records, that she
 4 believed the petitioner had met the burden to
 5 show reasonable cause to believe that your
 6 mother was --
 7 A. My mother didn't have --
 8 Q. -- incompetent?
 9 A. -- and attorney.
 10 MR. SPARKS: Stop, please.
 11 THE WITNESS: I'm sorry.
 12 MR. SPARKS: Thank you. Go ahead.
 13 THE WITNESS: I'm sorry.
 14 A. No. The answer to your question is no.
 15 Q. Did you at any point in time become aware
 16 that Ms. Riddick had informed the court that
 17 she was concerned that your mother's
 18 well-being and estate were at risk without
 19 the appointment of an interim guardian?
 20 A. Not really, no. No. No.
 21 Q. Were you aware that the guardian ad litem had
 22 informed the court that you had had until
 23 recently an estranged relationship with your
 24 mother?
 25 A. Was I aware that Erin Riddick specifically

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1 said that I had a previously estranged
 2 relationship?
 3 Q. Yes.
 4 A. I don't think I was aware specifically that
 5 Erin Riddick said that, no. No, I wasn't.
 6 (HOFELLER EXHIBIT 8 was marked for
 7 identification.)
 8 MS. SCULLY: Can you provide Exhibit 8,
 9 please, to the witness.
 10 THE WITNESS: I never saw this. I'm
 11 sorry.
 12 BY MS. SCULLY:
 13 Q. Ms. Hofeller, you've had an opportunity to
 14 review the document marked as Exhibit 8?
 15 A. Uh-huh.
 16 Q. I believe you said a moment ago you've not
 17 previously seen the document marked as
 18 Exhibit 8?
 19 A. That's correct.
 20 Q. This is the first time you've seen the
 21 document marked as Exhibit 8?
 22 A. Yep.
 23 Q. You were aware, is it correct, that the court
 24 had entered an order appointing an interim
 25 guardian of your mother, correct? Whether

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1 you'd seen the document or not, you -- you
 2 were aware that the court had appointed an
 3 interim guardian for your mother?
 4 A. At what point?
 5 Q. On or about November 6th, 2018.
 6 A. I was aware that the hearing -- the result of
 7 the hearing was a interim guardian appointed,
 8 I believe, yes.
 9 Q. You were aware that there was an interim
 10 guardian appointed over both your mother's
 11 person and over her estate, correct?
 12 A. You know, again, I am reading these
 13 documents. I am not an attorney in these
 14 matters. In that that is the proper
 15 interpretation of these documents, I was
 16 aware of what these documents said. My
 17 mother's attorney handled the matter from
 18 that point forward, so my awareness would
 19 extend to reading this as a layperson. So
 20 if -- if it says -- if you're asking me was I
 21 aware that -- that this was done, I -- yes,
 22 I -- I guess. I'm not --
 23 Q. Contemporaneous with the proceedings that
 24 were ongoing, the incompetency proceedings,
 25 were you communicating with your mother's

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1 attorney about the proceedings?
 2 A. Well, this is a -- this has -- this had been
 3 going on -- this was on -- going on for quite
 4 a while. At -- at some point I did have
 5 communication with my mother's attorney on
 6 this matter, yes.
 7 Q. And your mother's attorney on this matter I
 8 believe you said was Douglas Noreen?
 9 A. That's right.
 10 Q. Did Mr. Noreen share with you or discuss with
 11 you the fact that an interim guardian over
 12 your mother's estate and over her person was
 13 going to be appointed by the court?
 14 A. Going to be? No.
 15 Q. Did he share with you that it was, in -- that
 16 it did, in fact, occur?
 17 A. I don't think that --
 18 MR. SPARKS: Objection. You're
 19 assuming facts not in -- in evidence and I --
 20 you might want to find out when Doug Noreen
 21 became her mother's attorney. Just a hint.
 22 Go ahead and answer the question to the
 23 best -- if you can, please.
 24 A. I think that the actual -- the -- the moment
 25 when I finally saw the result of that was --

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1 was after Doug Noreen was retained that I saw
 2 the paperwork; otherwise, I would not be --
 3 not really --
 4 Q. Do --
 5 A. -- don't tend to be in communication with the
 6 Wake County court as a -- as a matter of
 7 course.
 8 Q. Did someone represent your mother prior to
 9 Doug Noreen entering his appearance and
 10 representing her in the incompetency
 11 proceeding?
 12 A. No.
 13 Q. When did Mr. Noreen first begin to represent
 14 your mother?
 15 A. I think that his first conversation with her
 16 was one or two days after the preliminary.
 17 Q. What preliminary?
 18 A. The one at which apparently the interim
 19 guardian -- the one requested in these
 20 documents that I explained that I had seen.
 21 Q. One or two days after the document that's
 22 marked Exhibit 6, the petition for
 23 incompetence?
 24 A. Yes. Isn't there a -- yeah. I think that --
 25 if I -- let's see. November 8th rings a bell

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1 for the day that my mother retained Doug
 2 Noreen.
 3 Q. November 8th --
 4 A. Uh-huh.
 5 Q. -- 2018?
 6 A. Yeah.
 7 MS. SCULLY: Can you provide the
 8 witness Exhibit 9.
 9 (HOFELLER EXHIBIT 9 was marked for
 10 identification.)
 11 BY MS. SCULLY:
 12 Q. Ms. Hofeller, actually, before I review
 13 Exhibit 9, I had one follow-up question on
 14 Exhibit 8. If I could turn your attention
 15 back to Exhibit 8.
 16 Were you aware that the interim guardian
 17 of the estate that was appointed in these
 18 proceedings was Everett Bolton?
 19 A. Yes.
 20 Q. Did you have any communications with
 21 Mr. Bolton at any point in time?
 22 A. No.
 23 Q. No?
 24 A. No.
 25 Q. Thank you. Were you aware that the Wake

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1 County Human Services was appointed as the
 2 interim guardian over your mom's person?
 3 A. Was that the name? I thought it was
 4 LifeLinks? Oh, that was the one they
 5 suggested, maybe. I -- I was aware that it
 6 was a -- a -- a body of some sort rather than
 7 a -- an individual.
 8 Q. Did you at any point in time have any
 9 communications with anyone at Wake County
 10 Human Services?
 11 A. No.
 12 Q. Turning your attention to Exhibit 9, I
 13 believe you had an opportunity to review that
 14 a few moments ago, correct?
 15 A. Yeah.
 16 Q. Have you seen the document marked as Exhibit
 17 9 before today?
 18 A. I don't -- okay. Report of the -- of the
 19 guardian ad litem. I think I reviewed it
 20 briefly.
 21 Q. It appears on Exhibit 9, last page, there's a
 22 certificate of service and it reflects
 23 that -- do you see the last page there?
 24 A. Oh. Oh, okay. I -- I was going to say, this
 25 isn't...

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1 Q. On that page it reflects that -- Tom Sparks
 2 is listed as your attorney?
 3 A. Yes.
 4 Q. Yes. At this point in time, No- -- February
 5 6, 2019, was Tom Sparks acting as your
 6 attorney in these proceedings?
 7 MR. SPARKS: What -- what is this
 8 proceeding? I want to make sure you
 9 understand.
 10 MS. SCULLY: Sorry.
 11 BY MS. SCULLY:
 12 Q. The incompetency proceedings for your mother.
 13 A. Yes.
 14 Q. When did you first retain Mr. Sparks in
 15 connection with your mother's incompetency
 16 proceedings?
 17 A. Was it December or January? I don't -- it --
 18 it's all a blur. I think it was early
 19 January. It was after the hol- -- no. It
 20 was --
 21 THE WITNESS: I think you -- you got
 22 back to me during the holiday -- what I felt
 23 was the holiday time. There you go. Thank
 24 you.
 25 A. I'm sorry. I can't keep track of --

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1 Q. At this point --
 2 A. -- all these dates.
 3 Q. -- in time, February 6, 2019, was Mr. Sparks
 4 representing you in any other matters other
 5 than your mom's incompetency proceedings?
 6 A. I -- not -- not -- what else was going on
 7 then?
 8 Q. You were having communications with Mr. Speas
 9 and --
 10 A. Oh. Only in that --
 11 Q. -- Ms. Meese [sic].
 12 A. Only in that -- I'm sorry. Only in that
 13 he -- he was kind enough to allow me to use
 14 his office address as a service address where
 15 I could receive service.
 16 Q. Did you have any communications with your
 17 mother's counsel, Mr. Noreen, about the
 18 subpoena that was issued to her in -- in this
 19 litigation?
 20 A. No, I did not.
 21 Q. I take it you didn't have any communications
 22 with the interim guardian over her estate
 23 about the subpoena that was directed to her
 24 in this litigation, correct?
 25 A. Yes.

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1 Q. And you didn't have any communications with
 2 the interim guardian over her person
 3 regarding the subpoena that was issued upon
 4 her in this litigation, correct?
 5 A. That is correct.
 6 MS. SCULLY: Can you show the witness
 7 Exhibit 10.
 8 (HOFELLER EXHIBIT 10 was marked for
 9 identification.)
 10 BY MS. SCULLY:
 11 Q. Ms. Hofeller, have you had -- had an
 12 opportunity to review the document marked
 13 Exhibit 10?
 14 A. Yes.
 15 Q. Have you seen the document marked as Exhibit
 16 10 before?
 17 A. Yes.
 18 Q. When did you first see the document marked as
 19 Exhibit 10?
 20 A. Sometime after. I really don't know exactly
 21 when. My attorney received --
 22 MR. SPARKS: Some -- sometime after
 23 when? Please tell her.
 24 A. The 7th day of February, 2019.
 25 Q. Were you aware prior to February -- the date

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1 on the document marked as Exhibit 7, February
 2 7, 2019, that there was a plan to dismiss the
 3 incompetency proceedings and submit to the
 4 court the settlement agreement that had been
 5 entered into among the interested parties?
 6 A. You know, I was represented by my attorney at
 7 that time and he was in communication with my
 8 mother's attorney. What I was and wasn't
 9 aware of, that would be really difficult to
 10 say what and when and how and to what degree
 11 because it was being negotiated. I was,
 12 again, represented by counsel so I wasn't
 13 really being spoken to directly on these
 14 matters other than my attorney.
 15 Q. You understood that Exhibit 10 was a motion
 16 to dismiss that was submitted to the court
 17 along with a settlement agreement that was in
 18 the process of being executed, correct?
 19 MR. JONES: And I'll -- I'll -- I'll
 20 object. I think the witness has already
 21 testified that she was communicating with her
 22 attorney here so it seems like anything that
 23 she learned from her attorney would be
 24 privileged.
 25 THE WITNESS: Yes.

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1 MR. SPARKS: Your -- your awareness of
 2 it -- she's asked about your awareness of it.
 3 Will you --
 4 A. Yes. At some --
 5 MR. SPARKS: -- answer her question.
 6 A. -- point I was aware of -- of this, yes.
 7 Q. Do you know if the settlement agreement that
 8 is attached as Exhibit A to what's been
 9 marked as Exhibit 10, do you know if that, in
 10 fact, was ultimately signed by all the
 11 individuals that are --
 12 A. I would --
 13 Q. -- listed on --
 14 A. -- not --
 15 Q. -- Page 6 and 7?
 16 A. I'm sorry. I would not be able to tell you
 17 if this is exactly like the one that's signed
 18 without seeing the signatures on it. I was
 19 not a signator. I would not have a
 20 familiarity to the point where I would be
 21 able to say that this is the one that was
 22 signed.
 23 Q. Is it correct that you were aware that
 24 between the period November 6th, 2018, and
 25 February 7th, 2019, there was a interim

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1 guardian over your mother's estate and over
 2 her person?
 3 A. Yes. I'm trusting you that those are the
 4 right dates.
 5 MS. SCULLY: If I could just have a
 6 moment to look through my notes, I believe I
 7 don't have any further questions. Might have
 8 a couple col- -- follow-ups.
 9 THE VIDEOGRAPHER: Going off the
 10 record. The time is 2:57 p.m.
 11 (Whereupon, there was a recess in the
 12 proceedings from 2:57 p.m. to 2:58 p.m.)
 13 THE VIDEOGRAPHER: Going back on the
 14 record. The time is 2:58 p.m.
 15 EXAMINATION
 16 BY MR. BRANCH:
 17 Q. Good afternoon, Ms. Hofeller. My name is
 18 John Branch. I am counsel for the intervenor
 19 defendants and with the Shanahan Law Group
 20 law firm here in Raleigh. Appreciate you
 21 kind of plowing through things today. I know
 22 there's been a lot and my hope is that I
 23 don't have very many topics for you to cover
 24 and we can get out of here on a fairly quick
 25 basis. But what -- what's going to happen is

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1 I'm going to jump around some because my
 2 colleague has covered 95 percent of what I
 3 had on my list to cover. So if you would be
 4 patient with me if I do that, and if you
 5 don't understand any of the questions that I
 6 pose, want me to restate anything, please
 7 feel free to ask me to do so. I'm happy to
 8 accommodate you as best --
 9 A. Thank you.
 10 Q. -- that I can.
 11 My first question is, what's your home
 12 address?
 13 A. I stated that I wanted that protected.
 14 I'm --
 15 Q. And --
 16 A. -- a survivor of domestic violence and these
 17 documents proliferate at an amazing rate. I
 18 don't believe that it's in my best interest
 19 or -- it's a risk to my safety. That -- that
 20 address is -- I've been able to have it
 21 sealed with courts in the past. I think it's
 22 well established that I'm --
 23 Q. Well, and --
 24 A. -- at risk.
 25 Q. -- with all due respect, ma'am, I -- I don't

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1 know that part of your personal history and
 2 I'm not --
 3 A. Uh-huh.
 4 Q. -- trying to antagonize you by asking you
 5 your home address. However, there's a
 6 process that the parties have agreed to with
 7 regard to having documents held confidential
 8 and highly confidential in the context of
 9 this litigation. And so what I would suggest
 10 is that if you're asking that the -- your
 11 address that you -- that would be -- that the
 12 parties would agree that it is confidential
 13 or highly confidential, I'm certain that we
 14 would not have an objection to it so long as
 15 we --
 16 MR. SPARKS: She can be served at my
 17 office. She's not going to agree to reveal
 18 that. If you want to go to the court and --
 19 and compel that, you can go to the court and
 20 compel that, but --
 21 MR. BRANCH: Okay.
 22 MR. SPARKS: -- she can be served at my
 23 office.
 24 BY MR. BRANCH:
 25 Q. And just -- just so we're clear, for purposes

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1 of any later subpoenas that's served in --
 2 that are served in the context of this
 3 lawsuit, trial subpoenas or any other
 4 documents, you're willing to be served
 5 through counsel here as opposed to at your
 6 house?
 7 MR. JONES: Hold on.
 8 MR. SPARKS: At this time are you
 9 willing to have that done?
 10 THE WITNESS: Yes.
 11 BY MR. BRANCH:
 12 Q. All right. And in the event that you are --
 13 you withdraw that authorization for your
 14 lawyer, would you then be willing to provide
 15 us with your home address so that we can
 16 serve you with process?
 17 MR. JONES: I'll object. She's
 18 outside -- she lives outside the range of the
 19 subpoena range of the court. She already
 20 testified --
 21 MR. BRANCH: I mean, doesn't mean we
 22 can't subpoena her and we have a right to --
 23 in the event that we believe that her
 24 testimony is necessary at trial to subpoena
 25 her to testify and --

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1 MR. JONES: Agree to disagree. If
 2 she's outside the range of the -- the
 3 subpoena range of the court I think you can't
 4 subpoena her.
 5 MR. SPARKS: So that we can move on,
 6 we've been here for a long time, may I
 7 interject with a question or two, please --
 8 MR. BRANCH: Uh-huh.
 9 MR. SPARKS: -- if -- if that's okay
 10 with you because it's out of order?
 11 At this time, Ms. Hofeller, are you
 12 willing to have -- allow me to accept service
 13 of documents on your behalf?
 14 THE WITNESS: I am, yes.
 15 MR. SPARKS: If that changes, will you
 16 provide to me an address at which you can be
 17 served, wherever that address is, and give me
 18 permission to let all these fine people know
 19 and everybody that's -- every attorney
 20 involved in this case know where that address
 21 might be?
 22 THE WITNESS: Yes. Yes, as long as it
 23 doesn't appear on any of these documents.
 24 MR. SPARKS: No. No. No. I didn't
 25 ask you for your home address. I said an

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1 address --
 2 THE WITNESS: Oh, yes.
 3 MR. SPARKS: -- at which you can be
 4 served.
 5 THE WITNESS: Yes. Absolutely.
 6 MR. SPARKS: Okay. Is that -- is that
 7 sufficient, sir?
 8 MR. BRANCH: Yeah, I think that's fine.
 9 MS. SCULLY: Yeah.
 10 MR. SPARKS: Thank you. I'm sorry to
 11 interrupt.
 12 MR. BRANCH: No. No. Well, that was
 13 very helpful so thank you for interrupting.
 14 THE WITNESS: Thanks.
 15 BY MR. BRANCH:
 16 Q. Why did you pick Common Cause to reach out to
 17 you -- or to reach out to with regard to
 18 finding an attorney to represent your mother
 19 in the competency dispute?
 20 MR. JONES: Objection, asked and
 21 answered earlier.
 22 A. I answered that question I thought pretty
 23 thoroughly.
 24 Q. And maybe I missed it, but I'd just like to
 25 go back over it just for a little bit. I

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1 mean, why -- again, why Common Cause?
 2 MR. JONES: Objection, asked and
 3 answered.
 4 MR. BRANCH: And, again, she can answer
 5 the question.
 6 A. They are local. They're local and I needed
 7 to, you know, ascertain who was local as far
 8 as local attorneys, and their knowledge of
 9 the politicization of my family affairs as it
 10 pertains to anyone who is involved on this
 11 level with politics, it seemed that they
 12 would comprehend that.
 13 Q. And why -- why did it seem like Common Cause
 14 would have a comprehension of the
 15 politicization of your family's affairs?
 16 A. Because all of the attorneys involved in all
 17 of these matters would have an understanding
 18 of it.
 19 Q. So that's because Common Cause had attorneys
 20 that had been involved in legal matters with
 21 knowledge of the politicization of your
 22 family's affairs?
 23 A. How shall I put this? Your average American
 24 doesn't understand what redistricting even
 25 is, so attorneys that are involved in matters

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1 that pertain to it are much more likely to
 2 understand the importance of my father's
 3 position on these matters.
 4 Q. Okay. And prior to reaching out to Common
 5 Cause about the -- about the topics on which
 6 you reached out to them, you were aware that
 7 they -- that Common Cause was involved in
 8 litigation regarding redistricting?
 9 A. Yes.
 10 Q. And were you -- and you were aware that they
 11 had taken positions adverse to those of your
 12 father or your father's businesses?
 13 A. You know, my father --
 14 MR. JONES: Oh, object. Object.
 15 MR. SPARKS: She --
 16 MR. JONES: Ans and ans --
 17 MR. SPARKS: She --
 18 MR. JONES: Asked and answered.
 19 MR. SPARKS: She actually said that --
 20 THE WITNESS: Yeah.
 21 MR. JONES: You just changed the word
 22 antagonistic to adverse. It's been asked and
 23 answered multiple times.
 24 MR. BRANCH: Well, then it's a --
 25 A. And this wasn't my father's --

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1 MR. BRANCH: -- different question.
 2 A. -- position. This was just what he did.
 3 MR. SPARKS: Please.
 4 THE WITNESS: I'm sorry.
 5 BY MR. BRANCH:
 6 Q. Was your father retained by parties in
 7 litigation with Common Cause?
 8 MR. JONES: Objection. There's no
 9 establishment of any foundation.
 10 MR. BRANCH: I'm asking if she has
 11 knowledge of that.
 12 A. I don't know the details of how my father was
 13 actually involved in all of this. I don't
 14 know the details. I -- he -- he was all over
 15 the country all the time my whole entire
 16 childhood. I don't know when he signed on
 17 with who in what capacity, whether he was
 18 working for the RNC, whether he was a
 19 consultant. I don't know those details. It
 20 would be very -- I don't know. It seems
 21 almost like it -- it -- we're trying to
 22 establish that I would misstate. I would
 23 rather just go ahead and say that I don't
 24 know these details. If you continue to press
 25 me to tell you yes or no, eventually there is

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1 an idea that I will say that I know something
 2 that I wasn't aware of.
 3 Q. And I -- to be clear, I don't know is a
 4 perfectly valid answer. If you don't know,
 5 you don't know. That's fine. I'm not trying
 6 to press you for a certain answer. I'm
 7 trying to understand what it is you do
 8 actually know.
 9 A. And, again, I've really tried to --
 10 MR. JONES: There's no --
 11 THE WITNESS: Okay.
 12 A. I tried to address it before.
 13 Q. And so are you aware that the redistricting
 14 maps at issue in this case are ones that were
 15 passed by the North Carolina General Assembly
 16 in 2017?
 17 A. Passed by? You mean -- no. No, I wasn't
 18 aware.
 19 Q. Okay. Well, are you aware that redistricting
 20 maps are enacted laws by the North Carolina
 21 General Assembly in North Carolina?
 22 A. No.
 23 Q. And you weren't -- I believe you just
 24 testified that you weren't aware that the
 25 maps that are being challenged by the

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1 plaintiffs in this lawsuit are ones that were
 2 enacted in 2017?
 3 A. No. I didn't know --
 4 Q. Okay.
 5 A. -- any of those state- -- specifics.
 6 Q. If -- on the assumption that I'm correct that
 7 the General Assembly passed the maps that are
 8 at issue in this litigation in 2017, would it
 9 be correct to say that you had no
 10 communications with your father about those
 11 maps that were passed?
 12 A. I don't know when he started drawing those
 13 maps. My fa- -- I was an only child. My
 14 father and I spoke about a lot of matters
 15 right up until the point when I didn't speak
 16 to him anymore. So I have no idea whether or
 17 not the maps that he was drawing the last
 18 time I spoke to him were those maps. I would
 19 have no way of knowing that.
 20 Q. So you have no way of knowing one way or
 21 another?
 22 A. That's right.
 23 Q. Okay. Did you -- what's -- I'm not trying to
 24 raise the same concerns you have about your
 25 address, but I do have some questions about

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1 the use of your phone. So --
 2 A. The use of my what?
 3 Q. Your --
 4 MS. SCULLY: Phone.
 5 BY MR. BRANCH:
 6 Q. Your cell phone. And so I'm going to ask you
 7 what your cell phone number is so...
 8 MR. JONES: I'll --
 9 BY MR. BRANCH:
 10 Q. Are you willing -- are you willing to share
 11 that for the --
 12 A. No.
 13 Q. Okay. Let me ask the question a different
 14 way. Have you used the same -- do you have a
 15 smartphone that you use -- that is associated
 16 with the regular phone number that you use
 17 and give out to people?
 18 A. Forgive me for being a little bit concerned
 19 about where -- I mean, I -- what can I say?
 20 I mean, I -- the -- what -- what period of
 21 time are we talking about here? I mean...
 22 Q. Current -- let's say today do you have an
 23 iPhone?
 24 A. Do I have --
 25 Q. Do you have --

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1 A. -- a smartphone?
 2 Q. -- an Android? Yes. That --
 3 A. Yes, I have a smartphone.
 4 Q. Okay. And what kind of a phone is it? Is it
 5 an iPhone, Android?
 6 MR. JONES: Ob- -- object. This is --
 7 this is ri- -- ridiculously irrelevant.
 8 MR. BRANCH: It is not.
 9 BY MR. BRANCH:
 10 Q. You can answer.
 11 A. It's -- it's either an iPhone or an Android.
 12 Q. All right. And it's one specific device. Is
 13 that the same device that you have used since
 14 September 30th of 2018?
 15 A. No.
 16 Q. Okay. How many different devices have you
 17 used since September 30th of 2018 associated
 18 with your primary telephone number?
 19 A. Two.
 20 Q. Two?
 21 A. Two, I think, yeah.
 22 Q. Okay. Do you --
 23 A. I don't know. These were not associated with
 24 the same phone number. I -- I'm a popular
 25 person. I don't tend to just give my phone

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1 number out and I also tend to -- to find that
 2 it's better when you're on Google to -- to
 3 not be quite as consistent as most of -- most
 4 people are.
 5 MR. SPARKS: Do you need to take a
 6 break?
 7 THE WITNESS: No. No, I don't.
 8 A. So, no, it hasn't been the same phone number.
 9 Q. Okay. And -- all right. So the question I
 10 had was actually as to the device that you
 11 use, the physical hardware. And what I was
 12 asking, and it was based on an assumption
 13 that I think turned out not to be correct,
 14 was how many different devices have you used
 15 since September 30th of 2018 to present day?
 16 A. I think it's two. Two.
 17 Q. Okay. Okay. Do you -- did you change phone
 18 numbers when you changed devices at some
 19 point during that period of time?
 20 A. Yes.
 21 Q. Okay. Can you tell me approximately when
 22 that was?
 23 A. Late last year, I think.
 24 Q. Towards the -- do you think possibly
 25 December? I'm not looking for a specific

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1 date.
 2 A. Possibly, yeah.
 3 Q. Okay. Can you tell me why you switched phone
 4 numbers and devices?
 5 A. Old -- old device, running out of storage. I
 6 didn't have a contract so...
 7 Q. Okay. Did you keep the old device?
 8 A. For a while I did.
 9 Q. And where is it now?
 10 A. I gave it to a friend. Cleared it off, reset
 11 it to factory settings, and gave it to a
 12 friend of mine who couldn't afford to buy a
 13 new one.
 14 Q. Okay. And when did you do that
 15 approximately?
 16 A. January, February, sometime in there.
 17 Q. All right. And is that -- you testified
 18 earlier when you were asked about the --
 19 being -- whether you're in possession of the
 20 text messages with Mr. Speas that some of the
 21 old text messages had been deleted. Were
 22 they -- when you talked about --
 23 A. That's why I got a --
 24 Q. -- them being --
 25 A. -- new phone.

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1 MR. SPARKS: Let him --
 2 THE WITNESS: I'm sorry.
 3 MR. SPARKS: Let him answer --
 4 THE WITNESS: I'm sorry.
 5 MR. SPARKS: -- ask the question,
 6 please.
 7 BY MR. BRANCH:
 8 Q. Yeah. Well, I think -- you -- you can go
 9 ahead and explain. Can you tell me what
 10 happened?
 11 A. Yeah. My phone started running out of
 12 storage, it couldn't do the updates, and as
 13 it ran more and more out of storage, it was
 14 dropping -- it was dropping things like text
 15 messages and -- yeah. Both the iPhones and
 16 the androids do that so...
 17 Q. Okay. And then after it was dropping text
 18 messages, you went and got a new phone?
 19 A. You know, as -- at my earliest convenience I
 20 got a new phone.
 21 Q. Okay. And -- and to the extent that
 22 you've -- well, strike that.
 23 Has -- have you encountered the same
 24 problems with dropping phone calls and text
 25 messages since you've had your new phone?

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1 A. I don't think so.
 2 Q. Okay. So you wouldn't have lost any of the
 3 text messages that have been sent to or from
 4 you with regard to the new phone?
 5 A. I don't suppose that I would have.
 6 Q. Okay. And the old phone, I believe you
 7 testified that you gave -- you erased the
 8 information that was on the old phone and
 9 gave it to a friend of yours in January or
 10 February of this year?
 11 A. Sometime early this year, yeah.
 12 Q. Okay. What -- I'm shifting topics back to
 13 the -- the devices that you turned over to
 14 Arnold & Porter in connection with the
 15 subpoena. What computers or other electronic
 16 devices did you use to read the contents of
 17 those hard drives or thumb drives?
 18 A. A laptop.
 19 Q. Was it just one laptop?
 20 A. Yes.
 21 Q. And do you still have possession of the
 22 laptop?
 23 A. Yes, I do.
 24 Q. Okay.
 25 MR. BRANCH: All right. If we can go

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1 off the record for a couple minutes, I'm just
 2 about done.
 3 MS. SCULLY: I want to talk about
 4 something.
 5 THE VIDEOGRAPHER: Going off the
 6 record. The time is 3:15 p.m.
 7 (Whereupon, there was a recess in the
 8 proceedings from 3:15 p.m. to 3:18 p.m.)
 9 THE VIDEOGRAPHER: Going back on the
 10 record. The time is 3:18 p.m.
 11 MR. BRANCH: Nothing further.
 12 MR. SPARKS: Nothing from me.
 13 MR. JONES: Nothing from me either.
 14 THE VIDEOGRAPHER: This concludes the
 15 video deposition. Time going off the record
 16 is 3:18 p.m.
 17 [SIGNATURE RESERVED]
 18 [DEPOSITION CONCLUDED AT 3:18 P.M.]
 19
 20
 21
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 23
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 25

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1 ACKNOWLEDGEMENT OF DEPONENT
 2
 3 I, STEPHANIE HOFELLER, declare under the
 4 penalties of perjury under the State of North
 5 Carolina that I have read the foregoing 212 pages,
 6 which contain a correct transcription of answers
 7 made by me to the question therein recorded, with
 8 the exception(s) and/or addition(s) reflected on
 9 the correction sheet attached hereto, if any.
 10 Signed this, the ____ day of
 11 _____, 2019.
 12
 13
 14 _____
 15 STEPHANIE HOFELLER
 16
 17 State of: _____
 18 County of: _____
 19 Subscribed and sworn to before me this
 20 ____ day of _____, 2019.
 21
 22 _____
 23 Notary Public
 24 My commission expires: _____
 25

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1 STATE OF NORTH CAROLINA)
) CERTIFICATE
 2 COUNTY OF WAKE)
 3
 4 I, LISA A. WHEELER, RPR, CRR, Court
 5 Reporter and Notary Public, the officer before whom
 6 the foregoing proceeding was conducted, do hereby
 7 certify that the witness whose testimony appears in
 8 the foregoing proceeding was duly sworn by me; that
 9 the testimony of said witness was taken by me to
 10 the best of my ability and thereafter transcribed
 11 by me; and that the foregoing pages, inclusive,
 12 constitute a true and accurate transcription of the
 13 testimony of the witness.
 14 I do further certify that I am neither
 15 counsel for, related to, nor employed by any of the
 16 parties to this action and, further, that I am not
 17 a relative or employee of any attorney or counsel
 18 employed by the parties thereof, nor financially or
 19 otherwise interested in the outcome of said action.
 20 This the 20th day of May, 2019.
 21
 22 _____
 23 Lisa A. Wheeler, RPR, CRR
 24 Notary Public #19981350007
 25

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1 ERRATA SHEET
 2 Case Name: COMMON CAUSE, ET AL. VS. DAVID R.
 3 LEWIS, ET AL.
 4 Witness Name: STEPHANIE HOFELLER
 5 Deposition Date: FRIDAY, MAY 17, 2019
 6 Page/Line Reads Should Read
 7 / | | |
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 24 _____
 25 Signature Date

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EXHIBIT B

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May 31, 2019

Mr. Stanton Jones
Via Email (Stanton.jones@arnoldporter.com)
Arnold & Porter
601 Massachusetts Ave., NW
Washington, DC 20001

RE: *Common Cause, et al. v. David R. Lewis, et al.*
Wake County Superior Court Case No.: 18-cvs-014001

Dear Stanton:

We write today on behalf of legislative defendants in the following cases arising out of North Carolina: *Dickson v. Rucho*, 11-cvs-16896 (N.C. Sup. Ct.) *NC NAACP v. McCrory*, (1:13-cv-00658 (M.D.N.C.) *Currie v. North Carolina*, 13-cvs-1419 (N.C. Sup. Ct.) *Harris v. Cooper*, 1:13-cv-00949 (M.D.N.C.) *Covington v. North Carolina*, 1:15-cv-00399 (M.D.N.C.) *Common Cause v. Rucho*, 1:16-cv-01026 (M.D.N.C.) the matter referenced above, and any cases consolidated or combined with the foregoing matters.

Our clients are extremely concerned and disturbed about recent revelations regarding the materials produced by Stephanie Hofeller in response to the document subpoena issued to her by Plaintiffs on February 13, 2019. These materials were not made available to us until the evening of Friday, May 3rd, after the Court in the referenced matter ordered Plaintiffs to produce the entirety of the materials to all parties as clearly required by the North Carolina Rules of Civil Procedure.

Now that we have been able to process our own complete index of the data taken by Ms. Hofeller, we make several observations. First, it is apparent that the index of the files you deem "sensitive personal information" is woefully incomplete. For instance, even simple searches of our complete index reveal that files containing confidential financial information were left out of the 1,001 files Plaintiffs designated "Highly Confidential/Outside Attorney's Eyes Only." As a result, and for the additional reasons discussed below, *Legislative Defendants hereby designate the entirety of the materials produced by Ms. Hofeller as "Highly Confidential/Outside Attorney's Eyes Only" pursuant to the Consent Protective Order in force in the referenced action.*

Next, our clients are deeply concerned that Plaintiffs and/or their counsel have been reviewing files in the Hofeller materials without first providing Legislative Defendants or the rightful owner of the materials an opportunity to conduct a privilege review. That there are many files in these materials that are protected by the attorney-client or work product privilege, or protected expert witness

materials, is beyond dispute. As just an example, the following filepath names from our index contain protected North Carolina case-related materials:

NC\ES0001A\C\NC 2015 Backup\NC Jan 2015 Expert Report\2014 GENERAL ELECTION SUMMARY.pdf

NC\ES0001A\C\NC 2015 Backup\NC Jan 2015 Expert Report\CVAP ACS 2009-2013.xlsx

NC\ES0001A\C\NC 2015 Backup\NC Jan 2015 Expert Report\North Carolina Declaration January 8 2014 1430.doc

NC\ES0001A\C\NC 2015 Backup\NC Jan 2015 Expert Report\North Carolina Declaration January 17 2014 2300.doc

NC\ES0018A\C\~\$Covington - Named Plaintiffs - For Mapping.xlsx

The file names alone clearly reveal that these are expert witness materials created by Dr. Hofeller in connection with North Carolina legal matters. These materials may not be accessed or viewed by Plaintiffs or their counsel unless and until our clients or the rightful owner of the materials have had an opportunity to determine whether these and other North Carolina-related files are covered by any applicable privilege. While Dr. Hofeller was not an attorney, he often worked with North Carolina attorneys in developing expert reports and other materials for use in litigation. In this work Dr. Hofeller communicated with attorneys and developed drafts, most or all of which would be privileged and not discoverable, much less reviewable by opposing lawyers. Not only have you apparently been reviewing likely privileged materials, Plaintiffs actually filed some of them in their April 26, 2019 filing in this case.

Moreover, the manner in which Plaintiffs came into possession of these files raise grave questions for our clients. At her deposition in the referenced case on May 17, 2019, Ms. Hofeller testified that she took the storage devices that she ultimately turned over pursuant to the subpoena while visiting her mother on October 11, 2018 at her mother's apartment at Springmoor Retirement Community (52:6-15). Ms. Hofeller asked her mother if she could take the drives because she was looking for pictures and other documents of hers that she thought might be on the drives. (26:5-10; 50:2-19). Notably, however, Ms. Hofeller testified that she was aware that a guardian had been appointed over both her mother and her mother's estate shortly after this encounter with her mother. (194:23-195:2). This casts serious doubt on her mother's ability to consent to Ms. Hofeller's taking of the devices and Ms. Hofeller's providing of those devices to counsel for Plaintiffs after her mother was placed under guardianship.

Worse still, is that Ms. Hofeller testified she assumed that there would be work files on the devices, and wasn't surprised when she found such work materials on the drive as Dr. Hofeller "always had information related to his work on the personal hard drive." (55:3-18). Yet, Ms. Hofeller had no discussions with her mother regarding if there was any business information contained on the drives as she "didn't wish to assert [herself] into the business intentionally" (51:6-18). Moreover, upon plugging the drives into her own laptop, Ms. Hofeller found information pertinent to Dr. Hofeller's work. (29:12-30:23) She testified that despite not discussing the business materials with her mother

that she “was more like, Common Cause may have an interest in these work files.” (56:12-13). Further, Ms. Hofeller reviewed all of the drives prior to sending them to counsel for Plaintiffs. (46:19-24). There is no doubt, then, that Ms. Hofeller was aware that she was delivering Dr. Hofeller’s confidential work files to counsel for Plaintiffs in this case.

Indeed, when Ms. Hofeller first reached out to Bob Phillips at Common Cause, it was for a referral to find an attorney for her mother during the incompetency proceedings. (31:15-32:6). She stated that she contacted Common Cause because she wanted “independent” counsel for her mother, and was concerned about potential political allegiances of lawyers she did not know in Raleigh. (37:14-38:9). She originally spoke with Bob Phillips in early November, 2018 by phone. (89:8-23). However, she also indicated that at the time she reached out, she knew that Common Cause was “representing the interest of voters that felt that this redistricting represented a violation of their constitutional rights” including maps that were drawn by Dr. Hofeller. (89:24-90:9). She also understood that she knew that Common Cause had historically been antagonistic to Dr. Hofeller’s work. (91:3-7).

Ms. Hofeller was referred by Mr. Phillips to Jane Pinsky, another employee of Common Cause. Ms. Hofeller first brought up the drives in an “anecdotal” way in December, 2018 to Pinsky, indicating she had some hard drives of Dr. Hofeller’s. (32:14-35:24; 100:22-101:1). Pinsky then explained to Ms. Hofeller that a current case was on appeal, but that in a new case about state legislative districts they would be “accepting new evidence.” (33:20-35:15). Ms. Hofeller praised Common Cause for their “progress” in that this was “the furthest [she had] ever seen a plaintiff get with anything [her] father drew.” (36:12-20). Ms. Pinsky then put Ms. Hofeller in touch with Eddie Speas and Caroline Mackie. (38:10-17).

Mr. Speas texted Ms. Hofeller shortly after her conversation with Ms. Pinsky in December 2018 and Ms. Hofeller then spoke with Mr. Speas and Ms. Mackie around the holidays. (38:10-17; 108-110). At the time of these conversations, Mr. Speas and Ms. Mackie were aware that there were issues regarding Mrs. Hofeller’s competency. (118:19-119:3).

In those calls, Ms. Hofeller indicated that she had material that might be relevant to the case, specifically external storage devices, she wanted to provide to them. (111:3-16; 38:21-39:1). She also disclosed that these drives contained information regarding personal data for herself and her parents in addition to the work data (127: 15-128: 20). Some of this personal data included personal health information about both Tom and Kathy Hofeller as well as Stephanie Hofeller’s children. (149:14-150:7).

Rather than advise Ms. Hofeller to seek the advice of an attorney for herself or her mother, Mr. Speas and Ms. Mackie told her that it would be best to turn over the data in its entirety rather than piece meal. (115:8-20). *Ms. Mackie and Mr. Speas also told her that “anyone” including plaintiffs or legislative defendants, could only look at the content of items that were explicitly and obviously related to this case, and as a result, she should not be concerned about a privacy issue with her or her mother.* (115:24-117:8).

When asked whether Ms. Hofeller engaged in any sort of review to determine whether the files on the drives contained privileged information, she testified that she had been told that the best way to “preserve the integrity” of the data was not to pick and choose and to leave everything as it was (64:9-65:5). Specifically, “in the discussion that I had with the attorneys Caroline Mackie and Eddie Speas, there was a discussion on how it would be best recognized in court as...a good chain of custody, transparency. There would be no accusation of picking and choosing, of keeping some things secret and some things not if the media were turned over to a third party in its exact state.” (67:7-18; 79:19-25).

These are just the facts our clients know from Ms. Hofeller’s deposition and other evidence so far. It appears that serious questions exist as to whether Kathy Hofeller was competent to give any alleged consent to Stephanie Hofeller to take Kathy Hofeller’s property, or the property of any other individuals or entities, or whether Kathy Hofeller was taken advantage of by her estranged daughter. Even if Kathy Hofeller was competent to give Stephanie Hofeller permission to take these materials, which we doubt, grave questions exist as to whether Kathy Hofeller could even give permission to her daughter to take drives containing information belonging to Dr. Hofeller’s business. Serious questions also exist as to whether Plaintiffs’ counsel should have advised Ms. Hofeller to seek counsel in transferring this property and whether Ms. Hofeller was misled as to what aspects of that property, if even properly in her possession, should be turned over to the Plaintiffs. Serious questions also exist as to whether Plaintiffs’ counsel encouraged Ms. Hofeller to transfer this property despite knowing that it contained or likely contained privileged information. At a minimum, North Carolina counsel would be familiar with N.C. R. Civ. P. 26(b)(4)(d)-(e), which protects draft reports and expert communications with counsel from discovery. Ms. Hofeller herself appears to have understood that such materials and communications existed on these drives yet counsel for Plaintiffs took no steps to ensure they did not come into possession of, much less review, such privileged materials and communications.

As our forensic vendor is continuing the process of processing the vast amount of data Ms. Hofeller took, we have not yet had an opportunity to examine all of the North Carolina-related files that may exist. Therefore, we reserve the right to identify and communicate any additional improper conduct that we may discover as we review the files. In the meantime, based on the undisputed facts known to the parties thus far, we demand that Plaintiffs and their counsel do the following immediately:

- (1) immediately cease and desist reviewing all materials produced by Ms. Hofeller, and particularly all files unrelated to North Carolina. Plaintiffs’ counsel Speas and Mackie assured Ms. Hofeller that only files related to this case could be reviewed, but it is clear based on recent events that Plaintiffs have not kept their word with Ms. Hofeller;
- (2) immediately cease and desist providing any or all of these materials to third parties unrelated to this case, as you have apparently recently done in a matter pending in New York;
- (3) return all of the produced materials to the Trustee for the Kathleen H. Hofeller Irrevocable Trust to allow for a privilege review of Dr. Hofeller’s documents;

May 31, 2019

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- (4) identify by name all individuals you employ who have reviewed the produced materials, the date(s) on which they reviewed those materials, and which materials they reviewed with sufficient specificity that we can determine which materials are at issue;
- (5) inform us which of these wrongfully produced materials have been shared outside your firms, including but not limited to any expert witnesses in this case, and, if so, with whom and which materials with sufficient specificity to allow us to assess the scope of the intrusion into protected materials; and,
- (6) attest that all copies of the materials wrongfully produced by Ms. Hofeller are no longer in your possession and have been destroyed.

We remain willing to meet and confer on these issues, but must insist on your compliance with the North Carolina Rules of Civil Procedure and Rules of Professional Responsibility. Should you persist in neglecting your professional responsibilities, our clients are considering all options available to them to enforce their rights. We appreciate your attention and compliance with the steps outlined above by June 5, 2019.

Sincerely,



Phillip J. Strach

CC: All Counsel of Record
PJS:amr

38739743.1

EXHIBIT C

June 5, 2019

VIA E-MAIL

Phillip J. Strach
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 110
Raleigh, NC 27609
phillip.strach@ogletree.com

Re: *Common Cause v. Lewis*, 18 CVS 0140001 (Wake County Sup. Ct., N.C.)

Dear Mr. Strach:

On behalf of Plaintiffs in the above-captioned lawsuit, I write in response to your May 31, 2019 letter on behalf of Legislative Defendants in both this case and several other cases concerning certain electronic storage devices produced by Stephanie Hofeller to Plaintiffs in response to their February 13, 2019 subpoena to Ms. Hofeller (the “Hofeller files”). Your letter (1) purports to designate the entirety of the Hofeller files as “Highly Confidential/Outside Attorneys’ Eyes Only” pursuant to the Consent Protective Order in this case, (2) asserts that Plaintiffs’ counsel have “likely” reviewed “privileged materials” of Legislative Defendants contained on the devices at issue, (3) expresses concern about the manner in which Plaintiffs received the devices from Ms. Hofeller in response to their subpoena, (4) makes several specific demands, and (5) suggests, without specificity or elaboration, that Plaintiffs’ counsel have been “neglecting [their] professional responsibilities.”

Your letter is not only baseless in every respect, but also troubling in its own right. We are concerned that Legislative Defendants are attempting—unilaterally and without authorization—to designate evidence produced by a *third party* in discovery pursuant to a *lawful subpoena* as Highly Confidential under the Court’s Consent Protective Order, apparently in an effort to conceal their own wrongdoing. Such wrongdoing appears to include false statements made by Legislative Defendants to federal courts, the Superior Court in this case, and the people of North Carolina.

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June 5, 2019
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I. Legislative Defendants Have No Authority to Unilaterally Designate the Hofeller Files as Highly Confidential Under the Consent Protective Order

Your letter purports to “designate the entirety of the materials produced by Ms. Hofeller as ‘Highly Confidential/Outside Attorneys’ Eyes Only’ pursuant to the Consent Protective Order in” this case. But the Consent Protective Order does not authorize Legislative Defendants to designate *any* of the Hofeller files as Highly Confidential, let alone *all* of them. Paragraph 1 of the Order states: “To fall within the scope of this Agreement, any such Confidential material shall be designated as ‘CONFIDENTIAL’ or ‘HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY,’ *by the Party producing the material.*” 4/5/19 Consent Protective Order ¶ 1 (emphasis added). Paragraphs 2 and 3 confirm that only “[t]he producing Party may designate” materials as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” *Id.* ¶¶ 2, 3 (emphasis added). Specifically, “[t]he producing Party may designate as ‘CONFIDENTIAL’ any materials that it produces in the litigation” subject to meeting certain confidentiality criteria, *id.* ¶ 2, and “[t]he producing Party may designate as ‘HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS’ EYES ONLY’ (a) any non-public personal information, or (b) any CONFIDENTIAL material that the producing party reasonably and in good faith believes” meets certain additional criteria. *Id.* ¶ 3; *see also id.* ¶ 13 (stating that the Order applies equally to “information produced by a non-Party”).

Thus, the Consent Protective Order does not authorize anyone other than the party or non-party “producing the material” to designate such material as either Confidential or Highly Confidential. Legislative Defendants are not “the producing Party” of the Hofeller files, but instead are a “receiving party” of those files. Ms. Hofeller produced the Hofeller files, and she did not designate any of them as Confidential or Highly Confidential. To the contrary, Ms. Hofeller has testified to her desire that her father’s political and redistricting work be made available to serve as “a snapshot in time” and a “repository for . . . historical value” to provide “insight into the process -- the literal process.” S. Hofeller Dep. at 42:10-43:16; 104:12-105:16.

Furthermore, Legislative Defendants’ stated justification for attempting to designate the Hofeller files as Highly Confidential is pretextual. Your letter asserts that, in addition to the 1,001 files designated Highly Confidential pursuant to the Court’s May 1, 2019 Order, the devices include additional files containing “confidential financial information.” But your letter does not identify any such files, nor have you even attempted to establish that the number of such files is more than a small fraction of the total Hofeller files. If you are genuinely concerned about the privacy of files containing “confidential financial information,” you should identify each such file, and Plaintiffs will consider joining in a motion asking the Court to designate such files as Confidential

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or Highly Confidential, as appropriate. But your invocation of some small, unidentified number of files containing unspecified “confidential financial information” as a basis to designate hundreds of thousands of other files as Highly Confidential is unreasonable. The pretextual nature of your purported concern for the Hofeller family’s privacy is further laid bare by the fact that you attempted to designate “the entirety” of the files as Highly Confidential just one day after several of the Hofeller files—which exposed misconduct by federal government officials—were submitted to a federal district court and the United States Supreme Court in a case of national public importance.

While Plaintiffs would consider, as stated, jointly moving the Court to designate as Confidential or Highly Confidential any specific additional files containing “confidential financial information” for which a confidentiality designation would be appropriate, Legislative Defendants’ attempt to unilaterally designate “the entirety” of the Hofeller files as Highly Confidential is not authorized under the Consent Protective Order and is therefore without legal effect.

II. Legislative Defendants’ Privilege Claims Are Meritless

A. Plaintiffs’ Counsel Have Acted Properly and Responsibly At All Times and Have Not Reviewed Any Conceivably Privileged Materials

Your letter asserts that Plaintiffs’ counsel have “apparently been reviewing likely privileged materials” of Legislative Defendants. That assertion is wrong on every level.

First, while your letter asserts that there are “many” privileged materials among the Hofeller files, your letter identifies only *five* specific documents that you say are “expert witness materials created by Dr. Hofeller in connection with North Carolina legal matters.” Plaintiffs’ counsel have no intention of reviewing any of those five documents. Nor have Plaintiffs’ counsel reviewed—or have any intention of reviewing—any other draft expert report or draft declaration prepared in connection with litigation.

Second, your letter asserts that Plaintiffs “actually filed some” “likely privileged” materials in their April 26, 2019 Supplemental Reply Brief. You do not identify which of the files included in Plaintiffs’ April 26 reply brief are supposedly “likely privileged,” and for good reason. Legislative Defendants’ own April 29, 2019 response to Plaintiffs’ reply brief precludes Legislative Defendants from claiming privilege over the files included in the reply—or, indeed, over any draft maps or analyses of draft maps in the Hofeller files that existed before July 1, 2017. In their April 29 response, Legislative Defendants asserted that they had no “knowledge” of Dr. Hofeller’s work creating draft maps and analyses of draft maps before July 1, 2017, and Legislative Defendants

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specifically denied that they “authorized or were aware of any of the maps or charts Plaintiffs highlighted.” Having taken these positions that they had no knowledge of and did not authorize the creation of the material by Dr. Hofeller, Legislative Defendants cannot now contend that the materials are privileged as to them. Moreover, if Legislative Defendants had authorized Dr. Hofeller to draft these maps, they should be public records under state law and responsive to Plaintiffs’ discovery requests in this case.

Additionally, in the more than one month since Plaintiffs’ April 26 reply, Legislative Defendants never sought a protective order as to any materials included in the reply or asked that the reply be placed under seal.

B. Legislative Defendants Have Waived Any Privilege Claim

In any event, Legislative Defendants have waived any privilege they may have held over *any* information on the Hofeller files, several times over.

1. Legislative Defendants’ Failure to Object to Plaintiffs’ Subpoena or Move to Quash Waived Any Privilege Claim

As you know, we sent Legislative Defendants’ counsel written notice of Plaintiffs’ subpoena to Ms. Hofeller on February 13, 2019, the same day we served the subpoena. The subpoena sought “[a]ny storage device in [Ms. Hofeller’s] possession, custody, or control that contains” either any documents relating to Dr. Hofeller’s work on the challenged state House and state Senate Plans or any information “related to” any such documents. Legislative Defendants could have filed protective objections or a motion to quash, but they did not do so. As the Court has acknowledged: “No objection to or motion to quash the subpoena was filed by any party to this action or Ms. Hofeller.” 5/1/19 Order at 1; *see also* S. Hofeller Dep. at 39:2-20.

Legislative Defendants’ failure to object to the subpoena or move to quash—even though the subpoena on its face sought materials related to Dr. Hofeller’s work for Legislative Defendants—constitutes a clear waiver of any privilege. A party “waive[s] its privilege by its own inaction” when it “fail[s] to act to protect any privilege when served with copies of [a third-party] subpoena.” *Am. Home Assur. Co. v. Fremont Indem. Co.*, 1993 WL 426984, at *3-4 (S.D.N.Y. Oct. 18, 1993). “Where a party is aware” that a subpoenaed third party may possess the party’s privileged information, “the burden falls on that party to take affirmative steps to prevent the disclosure in order [to] preserve the privilege as to itself.” *Id.* at *4. “The failure to act to prevent or object to the disclosure of confidential communications when a party knows or should know that privileged documents may be disclosed by another party waives the privilege with respect to the

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party failing to act.” *Id.*; see also *Ravenswood Inv. Co., L.P. v. Avalon Corr. Servs., Inc.*, 2010 WL 11443364, at *2 (W.D. Okla. May 18, 2010) (“Because Defendant did not state its claim of privilege within fourteen days of service of the subpoena on [a third party], the Court concludes Defendant has waived any such claim.”); *Patterson v. Chicago Ass’n for Retarded Children*, 1997 WL 323575, at *3 (N.D. Ill. June 6, 1997) (“By failing to object” to third-party subpoena, party “essentially waived her claim to privilege, and the information gleaned via the subpoena may be used.”); *Scott v. Kiker*, 59 N.C. App. 458, 461, 297 S.E.2d 142, 145 (1982) (“Defendant . . . waived his privilege because he failed to object to the testimony.”).

Here, “[t]he broad scope of that subpoena” to Ms. Hofeller “should reasonably have alerted” Legislative Defendants “to the possibility that [Ms. Hofeller] might produce the [allegedly] privileged documents.” *Am. Home Assur.*, 1993 WL 426984, at *4. Legislative Defendants’ “failure to take any steps to prevent the disclosure of [allegedly] privileged documents waived the privilege they seek to assert.” *Id.*

2. Legislative Defendants’ Successful Demand That Plaintiffs Transmit Complete Copies of All of the Hofeller Files to the Other Defendants Waived Any Privilege Claim

Legislative Defendants independently waived any privilege by demanding that Plaintiffs transmit complete copies of all of the Hofeller files to State Defendants and Intervenor Defendants. Following the Court’s April 30 hearing, Plaintiffs transmitted complete copies of the full contents of the storage devices—without filtering out *any* of the files—to Intervenor Defendants and State Defendants, neither of which holds any privileged relationship with Legislative Defendants. Legislative Defendants successfully requested that the Court order Plaintiffs to transmit complete copies of the devices to all Defendants even though weeks earlier, on April 9, 2019, Plaintiffs sent you a searchable index of file names and file paths that made apparent the devices contain files involving Dr. Hofeller’s work for Legislative Defendants in litigation and other contexts. Legislative Defendants could have requested protective measures before these files were provided to the State Defendants and Intervenor Defendants, but they did not.

Given that “the documents were revealed to third parties without objection”—at Legislative Defendants’ request, no less—Legislative Defendants have waived any claim of privilege over them. *Durham Indus. Inc. v. N. River Ins. Co.*, 1980 WL 112700, at *2 (S.D.N.Y. May 8, 1980); see also *Scott v. Glickman*, 199 F.R.D. 174, 179 (E.D.N.C. 2001) (finding waiver where no “reasonable protective measures were employed in order to safeguard claims of privilege” or “to ensure confidentiality” before documents were produced); *Parkway Gallery Furniture, Inc. v. Kittinger/Penn. House Grp., Inc.*, 116

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F.R.D. 46, 50 (M.D.N.C. 1987) (“the privilege may be lost even by inadvertent disclosure when a person fails to take affirmative action and institute reasonable precautions to ensure that confidentiality will be maintained”).

Not only did Legislative Defendants demand that Plaintiffs disseminate the Hofeller files to the other Defendants, Legislative Defendants did so knowing that State Defendants have not been aligned with them in this litigation. *In re Martin Marietta Corp.*, 856 F.2d 619, 625 (4th Cir. 1988) (finding waiver where party disclosed documents to government actors who were “adverse during the proceedings at issue”); *Navajo Nation v. Peabody Holding Co.*, 255 F.R.D. 37, 48 (D.D.C. 2009) (finding waiver where a party placed allegedly privileged materials “in the hands of” a potentially adverse party).

3. Any Work-Product Protection Is Defeated by Plaintiffs’ Substantial Need for Information and Inability to Obtain It Elsewhere

Any possible claim of work-product privilege over materials related to Dr. Hofeller’s work during the *Covington* remedial phase and/or in drawing the 2017 Plans is also defeated by Plaintiffs’ substantial need for the materials and the prejudice to Plaintiffs and the public interest that would ensue were they concealed.

“The work product doctrine” is “a qualified privilege for certain materials prepared by an attorney acting on behalf of his client in anticipation of litigation.” *State v. Hardy*, 293 N.C. 105, 126, 235 S.E.2d 828, 841-42 (1977). It does not protect materials if a party shows “a ‘substantial need’ for the document and ‘undue hardship’ in obtaining its substantial equivalent by other means.” *Evans v. United Servs. Auto. Ass’n*, 142 N.C. App. 18, 28, 541 S.E.2d 782, 789 (N.C. Ct. App. 2001) (quoting N.C. Gen. Stat. § 1A-1, Rule 26(b)(3)).

Even based on a limited review of non-privileged materials, it is clear that Plaintiffs have a substantial need for the Hofeller files related to Dr. Hofeller’s work during the *Covington* remedial phase and/or in drawing the 2017 Plans, and that Plaintiffs—and the public—would suffer an extreme hardship if they were concealed. The files reveal evidence of false statements and material omissions to the federal district court in *Covington*, which will be highly relevant to the merits of Plaintiffs’ claims as well as any remedial process.

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**a. Legislative Defendants Made False Statements to the
Covington Court to Avoid Special Elections in 2017**

The Hofeller files reveal that Legislative Defendants made false statements to the *Covington* district court about when the 2017 Plans were created. As a result of those false statements, the court did not order special elections in 2017 that would have jeopardized Republican super-majority control of the state House and state Senate.¹

As you know, following the U.S. Supreme Court’s decision in *Covington* on June 5, 2017, the *Covington* district court ordered briefing on whether to conduct special elections under remedial state House and state Senate plans in 2017 or instead wait until the 2018 elections to implement remedial plans. In a brief submitted to the *Covington* court on July 6, 2017, Legislative Defendants repeatedly stated that no work on remedial plans had yet begun, and that Legislative Defendants therefore needed a long period of time to draft new plans. For instance, Legislative Defendants told the court:

- The General Assembly had not “start[ed] the laborious process of redistricting earlier” than July 2017. *Covington*, ECF No. 161 at 28.
- It had not been “necessary to begin the process” of drawing new districts “until at, the earliest, the end of the current Supreme Court term” on June 30, 2017. *Id.* at 29.
- “The General Assembly could begin the process of compiling a record in July 2017 with a goal of enacting new plans by the end of the year.” *Id.* at 28-29.
- In the “interim” between the Supreme Court’s stay of the district court’s judgment on January 10, 2017 and the end of the Supreme Court term on June 30, 2017, rather than engage in “drawing remedial legislative districts,” “the North Carolina General Assembly did just what the Supreme Court allowed it to do – enact policies and legislation that benefit the State as a whole.” *Id.* at 28.

¹ In their April 29, 2019 filing in the instant case, Legislative Defendants asserted that certain of the Hofeller files from before October 31, 2016 may be privileged because they may have been prepared in connection with a declaration that Dr. Hofeller submitted in *Covington* on October 31, 2016. Legislative Defendants provided no support for this claim of possible privilege, but in any event, all of the Hofeller files underlying the discussion in this section post-date October 31, 2016.

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- “This Court should not short-circuit that process [of redistricting] by forcing the General Assembly to draw new maps without first engaging in the legislative and public consultation that this inherently policy-driven task necessitates.” *Id.* at 4.
- “Proceeding on [its proposed] timeline will allow the General Assembly to receive public input, engage in internal discussions about the design of remedial districts, prepare draft remedial plans, receive public responses to those draft remedial plans, and incorporate public feedback into the final plans.” *Id.* at 2.
- “Investigating, drawing, debating, and legislatively enacting satisfactory redistricting plans in time to hold elections in November 2017 or January 2018 would not even begin to allow [for sufficient] input by the public and other members of the General Assembly. And if the process and evidence relied upon by the General Assembly in 2011, developed over five months, was insufficient, it would be impossible for the General Assembly to establish a proper record in just a few days or weeks.” *Id.* at 13.

Similarly, at a July 27, 2017 hearing, Legislative Defendants’ counsel stated: “[R]edistricting is a very arduous, difficult task. It takes a lot of time and attention.” ECF No. 181 at 87:18-19.

Based on these statements by Legislative Defendants, the *Covington* court denied the plaintiffs’ request to order special elections in 2017. The court credited Legislative Defendants’ assertion that “Plaintiffs’ proposed August 11, 2017, deadline will provide them with insufficient time to conduct public hearings and engage in the robust deliberations necessary to develop districting plans.” *Covington v. North Carolina*, 267 F. Supp. 3d 664, 666 (M.D.N.C. 2017). While the court admonished Legislative Defendants for not having started the process sooner, the court agreed with Legislative Defendants that “there are many benefits to a time line that allows for the General Assembly (1) to receive public feedback on the criteria to be used in drawing the remedial districts and proposed remedial districting plans applying those criteria; (2) to revise the proposed plans based on that feedback; and (3) to engage in robust deliberation.” *Id.* at 667. Thus, the court concluded, an expedited schedule for adopting remedial plans, as needed to hold special elections in 2017, “[did] not provide the General Assembly with adequate time to meet their commendable goal of obtaining and considering public input and engaging in robust debate and discussion.” *Id.*

During the remedial phase through the fall of 2017, Legislative Defendants continued stating that no work had been done—including by Dr. Hofeller—to create new districts before July 2017:

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- Representative Lewis made the following statement at a July 26, 2017 hearing of the Joint Redistricting Committees (ECF 184-7 at 11-12):

REP MICHAUX: Are there any other maps that have not yet been released? For instance, anything that has been drawn by Dr. Hofeller or anybody else that you know of that have not yet been released?

REP. LEWIS: Not that I know of, sir.

- Representative Lewis made the following statements at an August 4, 2016 hearing of the Joint Redistricting Committees (ECF 184-8 at 72-73):

REP. MICHAUX: Can you assure this body right now that no redistricting maps have yet been drawn?

REP. LEWIS: I can assure this body that none has been drawn at my direction and that I have direct knowledge of. The only map I'm aware of was submitted by an independent group and presented to this committee last week.

...

REP. MICHAUX: Just to be clear, I'm talking about anything that any chairman or members of the Republican Party or anybody. No map has yet been drawn that should be handed out here? I'm -- people are concerned about the fact -- they think you've already drawn the maps. I want to make sure, coming from you, that you have not yet drawn maps.

REP. LEWIS: Thank you for the question. *I have not yet drawn maps nor have I directed that maps be drawn, nor am I aware of any other entity operating in conjunction with the leadership that has drawn maps.*

On September 7, 2017, Legislative Defendants submitted the hearing transcripts containing these statements to the district court in connection with securing the court's approval of the 2017 Plans.

In a September 22, 2017 submission to the *Covington* court seeking approval of the 2017 Plans, Legislative Defendants further stated: "Shortly following this Court's order of July 31, 2017, the legislative leaders, Senator Ralph Hise and Representative David Lewis, met with the map drawing consultant, Dr. Hofeller. Redistricting concepts

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were discussed with Dr. Hofeller as leaders made plans to comply with the Court's Order." ECF No. 192 at 6.

Likewise, in this case, Legislative Defendants have stated to the Superior Court that no draft maps existed prior to July or August 2017. For instance:

- 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."
- On April 26, 2019, Legislative Defendants stated in a Superior Court filing 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."
- At an April 30, 2019 hearing, Plaintiffs' counsel stated that July and August 2017 were the "timeframes when the redistricting actually occurred."

The Hofeller files reveal, however, that Dr. Hofeller had not only created numerous iterations of draft maps before July 2017, but that he had substantially *completed* the 2017 Plans *by the end of June 2017*. Specifically, the files show that Dr. Hofeller had already completed *over 97%* of the new Senate plan and *over 90%* of the new House plan by June 2017.

These facts are inconsistent with Legislative Defendants' prior statements to courts and the public that they had not "start[ed] the laborious process of redistricting" before July 2017, that "no legislative redistricting was occurring prior to July 2017," that "no drafts of the 2017 Plans existed prior to August 10, 2017," that they wanted to "first engag[e] in . . . legislative and public consultation" before "draw[ing] new maps," that they needed "[s]ufficient time" in July and August 2017 "to conduct public hearings and engage in the robust deliberations necessary to develop districting plans," that they only began discussing "redistricting concepts" with Dr. Hofeller in August 2017, and so on.

The inaccuracy of the above statements, and the fact that the entire public redistricting process in the fall of 2017 appears to have been a charade, are obviously relevant to Plaintiffs' claims on the merits, as well as the procedures to be used in any remedial process should Plaintiffs prevail. Plaintiffs cannot obtain this evidence from any other source, and there would be substantial hardship to Plaintiffs and the public interest were the truth concealed.

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b. Legislative Defendants Made False Statements to the Covington Court About the 2017 Redistricting Process and the Criteria Used to Create the Remedial Plans

In its July 31, 2017 order declining to order special elections in 2017 and allowing more time for the creation and enactment of remedial plans, the *Covington* court ordered Legislative Defendants to file, within seven days of enacting new plans, the following:

- “a description of the process the Senate Redistricting Committee, House Redistricting Committee, and General Assembly followed in enacting the new plans, including the identity of all participants involved in the process”;
- “any alternative district plans considered by the Senate Redistricting Committee, House Redistricting Committee, or the General Assembly”; and
- “the criteria the Senate Redistricting Committee, House Redistricting Committee, and General Assembly applied in drawing the districts in the new plans.”

Covington, 267 F. Supp. 3d at 668.

The Hofeller files reveal that statements in Legislative Defendants’ September 7, 2017 submission to the *Covington* court are false or misleading. In purporting to give a “Description of the 2017 Redistricting Process,” Legislative Defendants suggested that the process began “[o]n June 27, 2017,” when Senate President Pro Tempore Phil Berger and House Speaker Tim Moore approved a contract with Dr. Tom Hofeller as a mapdrawing consultant for Rep. David Lewis and Sen. Ralph Hise, the forthcoming chairs of the 2017 redistricting committees in the House and the Senate.” ECF No. 184 at 4. In reality, Dr. Hofeller had been drawing draft remedial maps since at least *August 2016*, and the new maps were substantially complete by June 27, 2017. In describing “Alternative Districting Plans Considered,” Legislative Defendants listed various alternative maps proposed by other members of the General Assembly, but did not list the numerous iterations of alternative draft maps that Dr. Hofeller had created. *Id.* at 9-10.

In the same submission, under the heading “Criteria Applied in Drawing the 2017 House and Senate Districts,” Legislative Defendants stated that the criteria “used to draw new districts in the 2017 House and Senate Redistricting plans” were those adopted by the House and Senate Redistricting Committees “[o]n August 10, 2017.” *Id.* at 6, 10. Of course, Dr. Hofeller had already completed drawing many of the districts by June 2017, over a month-and-a-half before August 10, 2017. Therefore, the criteria adopted by

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House and Senate Redistricting Committees on August 10, 2017 definitively were not the actual criteria “used to draw” these districts.

Again, the fact that the “Adopted Criteria” of the General Assembly were not the real criteria used by Dr Hofeller to create the 2017 Plans is highly relevant to the merits of Plaintiffs’ claims as well as any remedial process should Plaintiffs prevail, and there would be prejudice to Plaintiffs and the public interest if these facts were covered up.

c. Legislative Defendants Made False Statements About the Use of Racial Data in Creating the Remedial Plans

Legislative Defendants made additional false statements to the *Covington* court and the public concerning the use of racial data during the 2017 redistricting process. As you know, after the prior plans were invalidated as unconstitutional racial gerrymanders, *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), Legislative Defendants adopted a formal criterion prohibiting use of racial data for the 2017 Plans: “Data identifying the race of individuals or voters **shall not be used** in the drawing of legislative districts in the 2017 House and Senate plans.” ECF No. 184-37 at 2 (emphasis added).

Further, Legislative Defendants repeatedly stated to the court and the public that there was not any racial data in the map-drawing software or other databases, and that they and Dr. Hofeller accordingly did not know the racial composition of the new districts. As just a few examples, Legislative Defendants said the following:

- “[D]ata regarding the race of voters was not used in the drawing of the districts, and, in fact, **was not even loaded into the computer used by the map drawer to construct the districts.**” ECF No. 192 at 28 (court filing) (emphasis added);
- “[W]e have not had and do not have racial data on any of these districts.” ECF 184-17 (8/24/17 Senate Hr’g Tr. at 66 (statement of Sen. Hise)).
- “Race was not part of the database. It could not be calculated on the system[.]” *Id.* at 102 (statement of Sen. Hise).
- “There was no racial data reviewed in the preparation of this map.” ECF 184-18 (8/25/17 Hr’g Tr. at 20 (statement of Rep. Lewis)).

The Hofeller files reveal that none of the above statements were true. Dr. Hofeller did have “data on the race of voters” “loaded into the computer” he used to “construct the districts.” Dr. Hofeller’s computer in fact appears to have had data

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regarding the racial composition of the proposed districts for each and every iteration of his draft maps. Every Maptitude file with draft House or Senate districts from 2017—including draft maps from August 2017 *after* Legislative Defendants signed an engagement letter formally retaining Dr. Hofeller to create new maps—appears to have had racial data for the districts. Images from some of the Maptitude files even reveal that Dr. Hofeller apparently was displaying the black voting age population or “BVAP” of the new districts in some of the drafts. Dr. Hofeller also had racial data on the draft districts in Excel spreadsheets. Legislative Defendants’ statements that racial data “was not even loaded into the computer used by the map drawer to construct the districts,” that “[r]ace was not part of the database,” and so on were not true.

The full details of all of the above false statements will be made clear at trial, but in light of their existence, any work-product protection that could conceivably apply to the files at issue is defeated by Plaintiffs’ need for the materials and the inability to obtain substantially equivalent evidence elsewhere. *Hardy*, 235 S.E.2d at 841-42. Legislative Defendants’ apparent attempt to cover up this evidence, including by ineffectually designating “the entirety” of the Hofeller files as Highly Confidential under the Consent Protective Order, is troubling.

Notwithstanding the above, if you believe that there are additional draft expert reports similar to the specific files identified in your letter, we are willing to meet and confer about such files. As mentioned, we have no intention of reviewing any such files and would be willing to consider an accommodation to address your concerns, notwithstanding your clear waiver of any privilege. To facilitate such a meet-and-confer process, you should identify each such file, specify the privilege that you believe applies, and provide appropriate legal and factual support for your contention that the file is privileged.

III. Plaintiffs Properly Received the Hofeller Files in Response to their Subpoena

Your letter expresses concerns about “the manner in which Plaintiffs came into possession of” the devices. But as you know, on February 13, 2019, Plaintiffs served a lawful subpoena to Ms. Hofeller, through her lawyer, seeking the entire storage devices, and Ms. Hofeller produced the devices to Plaintiffs in response to the subpoena. As you also know from Ms. Hofeller’s deposition on May 17, 2019, when your co-counsel Ms. Scully questioned Ms. Hofeller about these issues for several hours, Ms. Hofeller testified that she properly obtained possession of the devices on October 11, 2018 from her parents’ home in Raleigh, with her mother Kathleen Hofeller’s knowledge and approval.

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S. Hofeller Dep. at 20:3-26:10; 52:6-10; 81:8-82:2; 110:17-11:24. Ms. Hofeller testified that her mother did “not object to [her] taking the devices,” and when asked whether her mother said “it was okay to take the devices,” Ms. Hofeller testified, “Yes. She encouraged me too.” *Id.* at 21:6-11; *see id.* at 26:3-10 (when Ms. Hofeller asked “Can I take these?” her mother “said absolutely”). Ms. Hofeller testified that “[her] mother gave to [her] unconditionally” “everything on those hard drives that [her] father had left in his room”—the devices were “given to [her] by [her] deceased father’s wife.” *Id.* at 81:8-82:2.

Ms. Hofeller further testified that she properly produced the devices to Plaintiffs in March 2019 in response to Plaintiffs’ February 13, 2019 subpoena, again with her mother’s knowledge and approval. *Id.* at 39:21-41:8. When asked whether her mother had given “her permission or her okay [for Ms. Hofeller] to provide the storage devices . . . to the plaintiffs’ lawyers in response to the subpoena,” Ms. Hofeller testified, “Yes.” *Id.* at 41:2-8.

The following responds to the specific “concerns” raised in your letter:

First, your letter asserts that there is “serious doubt on [Ms. Hofeller’s] mother’s ability to consent to Ms. Hofeller taking of the devices and Ms. Hofeller’s providing of those devices to counsel,” because a temporary guardian was appointed for Kathleen Hofeller “after” she gave the devices to her daughter. That is wrong. As described, Ms. Hofeller testified that her mother gave her the devices containing the Hofeller files on October 11, 2018. S. Hofeller Dep. at 52:6-10. It was only weeks *later*, on November 6, 2018, that an interim guardian ad litem was appointed for Kathleen Hofeller in a then-*ex parte* proceeding, in response to a Petition for Adjudication of Incompetence that had been filed one week earlier. On February 7, 2019, the incompetency petition with respect to Kathleen Hofeller was dismissed for failure to prosecute—without any finding of incompetency—after the parties reached a settlement. *See In re The Matter of Kathleen H. Hofeller*, 18 SP 2634 (N.C. Super. Feb. 7, 2019). That settlement, among other things, precludes the parties from bringing future incompetency proceedings against Kathleen Hofeller. Plaintiffs issued their subpoena to Stephanie Hofeller on February 13, 2019—after the incompetency proceeding was dismissed. The incompetency proceeding thus did not begin until after the date when Ms. Hofeller obtained possession of the devices with her mother’s permission, and the incompetency proceeding concluded (with no finding of incompetency) before the date when Ms. Hofeller sent the devices to Plaintiffs in response to their subpoena again with her mother’s permission,

Second, Ms. Hofeller’s deposition testimony contradicts your assertion that “Ms. Hofeller had no discussions with her mother regarding if there was any business

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information contained on the drives.” When asked whether she had “a specific conversation with [her] mother to tell her that [she] identified business records of [her] father’s on” the devices, Ms. Hofeller testified: “All of those points were at some point mentioned. My mother was aware of the fact that . . . the subpoena for these hard drives was, in fact, for *work-related files only*. So not only was it clear to her that there were *work-related files*, but it was clear to her that the lawyers that would be looking at it on either side would not be looking at anything other than *my father’s work-related files*.” S. Hofeller Dep. at 56:22-57:18 (emphases added); *see id.* at 59:13-18 (“Q. At what point in time did you discuss with your mother the possibility of turning over your father’s business records to Common Cause or to Arnold & Porter? A. The subpoena. That -- that would be when we specifically discussed that.”).

Third, your letter’s suggestion that Mr. Speas and Ms. Mackie should have “advise[d] Ms. Hofeller to seek the advice of an attorney for herself or her mother” is nonsensical. As you know, Stephanie Hofeller testified that she originally contacted Common Cause specifically to request a referral to an attorney independent of her father who could represent her mother in the incompetency proceeding. S. Hofeller Dep. at 31:7-19; 36:24-38:9. Common Cause provided such a referral, leading to Ms. Hofeller’s mother retaining an attorney to represent her in the incompetency proceeding. *Id.* at 59:5-12. As to Ms. Hofeller, she is the one who proactively contacted Common Cause, raised the fact that she had the electronic storage devices, and affirmatively offered to provide the devices to Common Cause. *Id.* at 31:7-38:17. We are aware of no obligation of a lawyer to advise a non-adverse third party like Ms. Hofeller to obtain counsel in these circumstances, and your letter does not identify any such obligation. In any event, the point is moot because Plaintiffs served their subpoena on Ms. Hofeller through her attorney, Tom Sparks, who later defended her deposition in this case. Ms. Hofeller was represented in connection with Plaintiffs’ subpoena.

Finally, your letter asserts that Mr. Speas and Ms. Mackie “told [Ms. Hofeller] that ‘anyone,’ including plaintiffs or legislative defendants, could only look at the content of items that were explicitly and obviously related to this case, and as a result, she should not be concerned about a privacy issue with her or her mother.” But Plaintiffs’ counsel have in fact attempted to shield sensitive personal information of the Hofeller family from disclosure, including through the designation of such materials as Highly Confidential pursuant to the Court’s May 1, 2019 Order. It is Legislative Defendants who successfully insisted that personal sensitive information in the Hofeller files be shared with other parties in the case, rather than filtered out and never reviewed by anyone. Beyond that, we understand from Ms. Hofeller that she approves of Plaintiffs’ review and use of the Hofeller files pertaining to Dr. Hofeller’s political and redistricting work. In any event, while Ms. Hofeller testified that she and her mother “felt . . . that the

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process would most likely be centered around provably pertinent files,” Ms. Hofeller also testified that she “assured her [mother] that she should be aware that once you -- and, again, this is something my father taught me. Once you let go of it, you don’t have control of it anymore so you can’t be guaranteed what will and won’t be disclosed, so it’s something you should be prepared for when you are involved with discovery.” S. Hofeller Dep. at 40:1-15.

IV. Legislative Defendants’ Assertions Regarding Plaintiffs’ Counsel’s Professional Responsibilities Are Frivolous and Improper

Your letter states that you “insist on compliance with the North Carolina Rules of Civil Procedure and Rules of Professional Responsibility,” and that Legislative Defendants “are considering all options available to them to enforce their rights” “[s]hould [Plaintiffs’ counsel] persist in neglecting [their] professional responsibilities.” But you do not identify a single rule of professional conduct purportedly implicated by Plaintiffs’ counsel’s actions. Your nonspecific references to Plaintiffs’ counsel’s “professional responsibilities” appear to be nothing more than an attempt to intimidate. We note that frivolous claims of professional ethics violations made to obtain an advantage in a civil matter are impermissible, and we refer you to District of Columbia Rule of Professional Conduct 8.4(g) and North Carolina Rule of Professional Responsibility 3.1. Under Rule 3.1, “a threat to file disciplinary charges is . . . improper if the disciplinary charges are frivolous.”²

V. Legislative Defendants’ Specific Demands Are Baseless and Unreasonable

First, your letter demands that Plaintiffs “immediately cease and desist reviewing all materials produced by Ms. Hofeller and particularly all files unrelated to North Carolina.” But Legislative Defendants, as leaders of the North Carolina General Assembly, have no legal interest in, and no standing to make demands regarding, files that are “unrelated to North Carolina.” Moreover, while this demand is predicated on Legislative Defendants’ (erroneous) understanding of Ms. Hofeller’s intent in producing the devices in response to Plaintiffs’ subpoena, Ms. Hofeller’s attorney recently confirmed in writing—prior to the filings in the federal census case—that Ms. Hofeller consents to use of the Hofeller files in connection with matters outside North Carolina.

Second, your letter demands that we “immediately cease and desist providing any or all of these materials to third parties unrelated to this case, as [we] have apparently

² Suzanne Lever, *I’m Telling Mom! Reporting Professional Misconduct*, N.C. State Bar Journal (June 2014), <https://www.ncbar.gov/for-lawyers/ethics/ethics-articles/im-telling-mom-reporting-professional-misconduct>.

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recently done in a matter pending in New York.” Again, Legislative Defendants have no standing to make demands regarding materials unrelated to North Carolina. Anyway, your demand is contrary to hornbook law. “The general rule . . . is that information produced in discovery in a civil case may be used in other cases.” *United States v. Comstock*, 2012 WL 1119949, at *1 (E.D.N.C. Apr. 3, 2012). Sharing discovery with litigants in other cases is not just permissible, but courts “have overwhelmingly and decisively endorsed the sharing of discovery information among different plaintiffs, in different cases, in different courts.” *Burlington City Bd. of Educ. v. U.S. Mineral Prod. Co.*, 115 F.R.D. 188, 190 (M.D.N.C. 1987) (emphasis added). Absent a protective order to the contrary (and there is no such order here with respect to the files at issue), nothing “prevent[s] [a litigant] who lawfully has obtained discovery . . . from using the discovery elsewhere.” *In re Accent Delight Int’l Ltd.*, 869 F.3d 121, 135 (2d Cir. 2017); see also *Parkway Gallery Furniture, Inc. v. Kittinger/Pennsylvania House Grp., Inc.*, 121 F.R.D. 264, 268-69 (M.D.N.C. 1988) (“[A] party needs to present good cause for prohibiting the dissemination of non-confidential discovery information or from prohibiting the utilization of such discovery in other litigation.”); *Ohio Valley Envtl. Coal. v. Elk Run Coal Co.*, 291 F.R.D. 114, 122 (S.D. W. Va. 2013) (“[T]he potential use of the fruits of discovery in other litigation is not, alone, a basis for a protective order.”); *FTC v. Digital Interactive Assocs., Inc.*, 1996 WL 912156, at *3 (D. Colo. Nov. 18, 1996) (“[D]issemination of information to litigants in other forums is often encouraged for purposes of judicial economy.”); *United States v. Hooker Chemicals & Plastics Corp.*, 90 F.R.D. 421, 426 (W.D.N.Y. 1981) (“Use of the discovery fruits disclosed in one lawsuit in connection with other litigation, and even in collaboration among plaintiffs’ attorneys, comes squarely within the purposes of the Federal Rules of Civil Procedure”); *Patterson v. Ford Motor Co.*, 85 F.R.D. 152, 153-54 (W.D. Tex. 1980) (similar).

Third, your letter demands, bizarrely, that Plaintiffs “return all of the produced materials to the Trustee for the Kathleen H. Hofeller Irrevocable Trust.” You cite no legal authority, and we can think of none, for the notion that a litigant can demand that subpoenaed electronic files be returned to the “Trustee” of a financial trust of the mother of the subpoenaed individual. Even if Kathleen Hofeller rather than Stephanie Hofeller had produced the files in response to the subpoena (which she did not), Kathleen Hofeller is legally competent, and you do not explain why the materials would go to a “Trustee” rather than to her. It appears that you are making this odd request because Kathleen Hofeller herself does not want return of the materials.

Fourth, your letter asks that Plaintiffs identify all “individuals [Plaintiffs’ counsel’s law firms] employ” who have reviewed the “produced materials.” As stated above, we can represent that no one at our law firms has any intention of reviewing any of the five specific files identified in your letter as purportedly privileged. We have no

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obligation to provide you further information regarding names of attorneys who have worked on this matter.

Fifth, your letter also asks which of the files that you characterize as “wrongfully produced materials have been shared outside [Plaintiffs’ counsel’s] firms.” While we have no obligation to respond, we can advise you of the following: As you know, on May 6, 2019, we provided complete copies of all of the Hofeller files to all three sets of Defendants, including Legislative Defendants represented by you, Intervenor Defendants represented by separate private counsel, and State Defendants represented by the North Carolina Attorney General’s Office. We provided complete copies of all of the Hofeller files to each set of Defendants because you demanded that we do so. We have no information about whether and to what extent Defendants may have shared files with others.

Lastly, your letter demands that Plaintiffs “attest that all copies of the materials wrongfully produced by Ms. Hofeller are no longer in [our] possession and have been destroyed.” Legislative Defendants have offered no legitimate basis for this demand. Moreover, given that the Hofeller files reveal wrongdoing by government officials, “destroy[ing]” the files could constitute spoliation.

Sincerely,

/s/ R. Stanton Jones
R. Stanton Jones