

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' RESPONSE TO
GEOGRAPHIC STRATEGIES
LLC'S MOTION FOR LEAVE
TO REQUEST AN ORDER OF
PROTECTION, AND IN THE
ALTERNATIVE, TO
INTERVENE UNDER
RULES 45 AND/OR 24**

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INTRODUCTION

The Court should deny Geographic Strategies' motion to designate "all of the Hofeller files" as Highly Confidential under the Consent Protective Order. Mot. for Leave at 1. Not only does Geographic Strategies have unclean hands that should prevent it from seeking relief in this case, but it indisputably lacks any legal or other interest in the majority of the Hofeller files.

Although Geographic Strategies' motion does not say so, the company and its principal, Dalton Oldham, previously evaded service of lawful subpoenas that this Court authorized and a South Carolina court issued to them in this case. Geographic Strategies and Mr. Oldham refused FedEx delivery of the subpoenas, ignored Plaintiffs' email attaching the subpoenas and attempting to arrange service, changed the company's longtime registered address for service of process, and evaded a final attempt at service by the Richland County Sheriff's Department. Evading service is always an affront to the lawful administration of justice. It is a "fundamental maxim" of North Carolina law that a person seeking discretionary relief "must come with clean hands," *Creech v. Melnik*, 347 N.C. 520, 529, 495 S.E.2d 907, 913 (1998), and a person who "evade[s] services" does not have "clean hands," *Currie v. Wood*, 112 F.R.D. 408, 410 (E.D.N.C. 1986). Given its repeated evasion of service, Geographic Strategies should not be heard to seek affirmative relief from this Court with respect to discovery in this case.

In any event, Geographic Strategies cannot meet its burden to justify the sweeping relief it seeks. Although Geographic Strategies seeks to designate "all" the Hofeller files as Highly Confidential, the company has no legal interest at all in a majority of those files. The company admits that Dr. Hofeller created numerous categories of files for matters in which he was personally involved and Geographic Strategies was not. These include, among other things, the files related to North Carolina's 2017 state House and Senate redistricting plans that are the

subject of this case, and files regarding the drawing of redistricting plans in many other states. Geographic Strategies has no standing to request a protective order with respect to files that Dr. Hofeller did not create on behalf of the company. Beyond that, Geographic Strategies has not identified a single file that Dr. Hofeller created for the company, much less met its burden to establish both a legal interest and a protectable confidentiality interest in any such file. Geographic Strategies just makes vague claims that unspecified files involve “proprietary methods of legal analysis,” Oldham Aff. ¶ 5, with no substantiation. The default presumption is that discovery materials are not confidential, and Geographic Strategies has not met its burden to overcome that presumption with respect to any of the files, let alone all of them.

The Court should deny the motion for these reasons and others discussed below.

BACKGROUND

On February 18, 2019, Plaintiffs filed a Motion for Commission requesting this Court’s authorization to issue out-of-state document and deposition subpoenas to Geographic Strategic LLC and its principal, Dalton Oldham, who is also an attorney. *See* Ex. A. This Court granted the motion on February 21, 2019. *See* Ex. B. In finding good cause for authorities in South Carolina to issue the subpoenas, this Court explained that “[i]t appears to the Court that Dalton Oldham and Geographic Strategies are likely to have documents and/or information in their possession that may be relevant to the subject matter involved in this action and the information sought is reasonably calculated to lead to the discovery of admissible evidence.” *Id.* On February 27, 2019, Plaintiffs obtained the subpoenas from the Common Pleas Court in Richland County, South Carolina. Ex. C; Ex. D.

Plaintiffs’ document subpoenas to Geographic Strategies and Mr. Oldham each requested, among other things, all documents and communications relating to the North Carolina

legislative districts at issue (the “2011 Plans” and “2017 Plans”), as well as “[a]ny computers used to draw the 2011 Plans and/or the 2017 Plans, including computers previously owned by Dr. Thomas Hofeller.” Ex. C, Attachment to Geographic Strategies Subpoena at 5; Ex. D, Attachment to Oldham Subpoena at 5. Plaintiffs’ separate subpoena to Mr. Oldham sought a deposition to be taken on March 18, 2019, at a law office in Columbia, South Carolina. Ex. E.

Plaintiffs sent the three subpoenas via FedEx to Geographic Strategies and Mr. Oldham at the address where Geographic Strategies was then registered with the South Carolina Secretary of State, which is the same address listed for Mr. Oldham with the South Carolina bar. Ex. F.

Geographic Strategies and Mr. Oldham refused to accept FedEx delivery of the subpoenas. FedEx was unable to deliver the package on its first attempt on March 1, and when FedEx tried again the next business day, the delivery was “Refused by recipient.” Ex. G at 2.

On March 6, after these refusals to accept delivery of the subpoenas, Plaintiffs emailed Mr. Oldham at the email address he uses for business and legal purposes, which is also the email address listed for Mr. Oldham with the South Carolina bar. *See* Exs. H, F; *see also, e.g.*, Certificate of Service at 3, *Va. House of Delegates v. Bethune Hill*, No. 18-281 (U.S.) (listing same email address).¹ Plaintiffs’ email, which attached all three subpoenas, advised Mr. Oldham that Plaintiffs had “attempted to serve [him] and Geographic Strategies with the attached subpoenas for records and for [Mr. Oldham’s] appearance at a deposition on 3/18.” Ex. H. Plaintiffs explained that they were “told that [Mr. Oldham and Geographic Strategies] recently refused service of these subpoenas,” and Plaintiffs asked Mr. Oldham to “state the legal basis for . . . refus[ing] service of court-authorized subpoenas.” *Id.* Plaintiffs asked Mr. Oldham to

¹ https://www.supremecourt.gov/DocketPDF/18/18-281/78413/20190104183326806_Certificate%2018-281.pdf

“provide a time within the next 2 days at which you will accept service,” “otherwise we will need to have the sheriff carry out the service.” *Id.* Mr. Oldham never responded to this email.

Instead, on March 11—just five days after Plaintiffs’ email warning Mr. Oldham that they intended to have the sheriff serve the subpoenas—Mr. Oldham filed papers with the South Carolina Secretary of State to change Geographic Strategies’ registered address for service of process. *See* Ex. I at 2. Mr. Oldham continues to list Geographic Strategies’ prior service address, which Geographic Strategies had held as its service address continuously since the company’s formation in 2011, as his contact address on legal filings he makes in the U.S. Supreme Court and with the South Carolina bar. Ex. F; *see Va. House of Delegates v. Bethune-Hill*, Opp’n to Mot. to Dismiss, No. 18-1134 (U.S. Apr. 15, 2019).²

While Mr. Oldham was in the process of changing Geographic Strategies’ registered service address, Plaintiffs enlisted the Richland County Sheriff’s Department to attempt service of the subpoenas. Geographic Strategies and Mr. Oldham evaded service from the Sheriff’s Department too. According to the Sheriff’s Department’s records, a member of the Department attempted to serve the subpoenas on March 14 and “Left Card” with “Doris Oldham,” whom the record describes as “mother.” Ex. C at 5. Plaintiffs’ counsel have been informed by the Sheriff’s Department that, upon leaving this card, the Department asked Mr. Oldham’s mother to have Mr. Oldham contact the Department to make arrangements for service, but he never did. On March 18, 2019, the Sheriff’s Department executed affidavits of non-service for each of the three subpoenas, writing that the Department had been “unable to serve” the subpoenas on either Geographic Strategies or Mr. Oldham prior to March 18, which was the date set for Mr.

² <https://www.brennancenter.org/sites/default/files/legal-work/2019-04-15-Opposition%20to%20Motions%20to%20Dismiss%20or%20Affirm.pdf>.

Oldham's deposition. Exs. C, D, E. Plaintiffs' counsel had spent significant time preparing for the deposition, which never occurred due to the evasion of service.

Legislative Defendants' counsel were aware of the subpoenas to Geographic Strategies and Mr. Oldham, and of Plaintiffs' inability to serve them. The same day the subpoenas were first sent via FedEx, February 28, 2019, Plaintiffs emailed copies of the subpoenas to counsel for all Defendants, including Legislative Defendants. Ex. J. Then, after the initial failed attempts to serve the subpoenas, Plaintiffs informed Legislative Defendants' counsel via email that Plaintiffs had "made multiple attempts to serve Dale Oldham with our subpoena, to no avail," and asked Legislative Defendants' counsel to inform Mr. Oldham of the failed attempts at service and that his impending deposition would have to be postponed. Ex. K. Legislative Defendants' counsel have worked closely with Mr. Oldham on numerous matters, including serving as co-counsel with him on behalf of the Virginia House of Delegates before the U.S. Supreme Court at the same time Plaintiffs were attempting to serve the subpoenas. *See Reply Br. for Appellants, Va. House of Delegates v. Bethune-Hill*, No. 18-281 (U.S. Feb. 27, 2019).³ Mr. Oldham has also served as a mapmaker for Legislative Defendants. In 2011, Mr. Oldham worked with Dr. Hofeller to draw the 2011 state House and Senate plans, which include some of the districts at issue in this case. *See Ex. L, Oldham Depo. Tr. 8, Dickson v. Rucho*, No. 11 CVS 16896 (N.C. Super. June 27, 2012) ("MR. FARR: We have agreed to make Mr. Oldham available because he was involved in drawing certain aspects of legislative maps that are part of the enacted plans.").

At Stephanie Hofeller's deposition on May 17, Ms. Hofeller testified that her mother had informed her that Mr. Oldham had visited her parents' home and took Dr. Hofeller's laptop and

³ https://www.supremecourt.gov/DocketPDF/18/18-281/89875/20190227132108190_18-281%20rb.pdf.

desktop computers. Ex. M at 26:11-27:9; *see also id.* at 26:16-24 (testifying that Ms. Hofeller’s mother said, “Dale took everything that he wanted”).

As this Court is aware, on February 13, 2019, Plaintiffs issued a subpoena to Ms. Hofeller and sent a copy to Legislative Defendants’ counsel the same day. A month later, after no party or non-party objected to the subpoena, Ms. Hofeller produced four external hard drives and eighteen thumb drives (the “Hofeller files”). *See* 5/1/2019 Order at 1-2. Plaintiffs received these storage devices on March 13, 2019, and timely notified all Defendants on March 20. *See id.* at 2. On March 27, Plaintiffs offered to send Legislative Defendants copies of all of the files after using keyword searches to filter out sensitive personal information, but Legislative Defendants declined that approach. Ex. P (3/27/19 email from E. Theodore). On April 9, Plaintiffs sent all Defendants a searchable index listing the files names and files paths of over 75,000 files on the devices.⁴ *Id.* (4/9/19 email from S. Jones). On April 18, while Plaintiffs’ motion for clarification regarding the 1,001 personal files remained pending, Plaintiffs offered to immediately send Defendants copies of all the Hofeller files other than those 1,001 files pending the Court’s resolution of the motion. Ex. Q (4/18/19 email from S. Jones). Legislative Defendants never responded to that offer. 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. In their recent June 17 filing, Legislative Defendants indicated that they have had their own complete index of the Hofeller files since May 15, 2019.

For several months after Plaintiffs’ receipt of materials from Ms. Hofeller became public, neither Geographic Strategies nor Mr. Oldham contacted Plaintiffs. It was not until June 13, 2019 that Geographic Strategies’ counsel sent a demand letter to Plaintiffs’ counsel. *See* Ex. N.

⁴ This PDF-searchable index was the entire index that Plaintiffs had at the time.

The letter asserted that files of Geographic Strategies “may have been obtained improperly and may even have been tortiously converted by those who obtained it and by those who, after notice, continue to retain and distribute it.” *Id.* at 2. The letter demanded, among other things, that Plaintiffs’ counsel “comply with relevant Rules of Professional Responsibility,” “[i]mmediately cease reviewing Geographic Strategies’ files,” and “[i]dentify by name” every attorney at Plaintiffs’ counsel’s law firms “who has reviewed the materials.” *Id.* The letter did not identify any specific files that Geographic Strategies considered to be its property. *See id.* Geographic Strategies filed its motion two business days later.

Despite having previously evaded service of a lawful subpoena in this case, and despite not identifying a single file over which it can claim confidentiality, Geographic Strategies’ motion asks this Court to designate “the entirety” of the Hofeller files as “Highly Confidential” under the Consent Protective Order in this case, citing Rule 26(c) and Rule 45(c)(7). *See Mot. for Leave at 2; Mot. to Designate at 6.* Geographic Strategies also asks the Court to order Plaintiffs to produce a “complete copy” of the Hofeller files to Geographic Strategies.

ARGUMENT

I. Geographic Strategies Cannot Seek Affirmative Relief from This Court After Evading Service of Subpoenas To Avoid Producing Highly Probative Evidence

Geographic Strategies should not be heard to seek relief from this Court given its evasion of lawfully issued subpoenas in this case. “The fundamental maxim, ‘He who comes into equity must come with clean hands,’ is a well-established foundation principle upon which the equity powers of the courts of North Carolina rest.” *Creech v. Melnik*, 347 N.C. 520, 529, 495 S.E.2d 907, 913 (1998). One who “evade[s] services” lacks “clean hands,” *Currie v. Wood*, 112 F.R.D. 408, 410 (E.D.N.C. 1986), and Geographic Strategies thus lacks clean hands here. The company and its principal, Mr. Oldham, repeatedly evaded service of duly-issued document and deposition

subpoenas seeking highly probative evidence in this case. They first refused FedEx delivery of the subpoenas, then ignored an email from Plaintiffs' counsel attaching the subpoenas and requesting a date to arrange service, and evaded a final attempt at service by the Richland County Sheriff's Department in South Carolina. *See* Exs. C, G, H. Mr. Oldham even changed Geographic Strategies' longtime registered service address just days after refusing FedEx delivery of the subpoenas and being warned that the next attempt at service would be carried out by the sheriff. Ex. I. Geographic Strategies and Mr. Oldham took all of these steps to evade service after this Court authorized the subpoenas on the basis that "Dalton Oldham and Geographic Strategies are likely to have documents and/or information in their possession that may be relevant to the subject matter involved in this action and the information sought is reasonably calculated to lead to the discovery of admissible information." Ex. A.

Geographic Strategies and Mr. Oldham's "conduct in evading the service of the subpoenas . . . impeded the proper administration of justice in [this] case" and "reflects a disdain for the legal process which cannot be condoned." *Matter of Cohen*, 139 A.D.2d 221, 223, 530 N.Y.S.2d 830, 832 (1988); *accord Agnew v. E*Trade Sec. LLC*, 811 F. Supp. 2d 1177, 1185-86 (E.D. Pa. 2011) (similar). "[T]he evasion of the service of a subpoena, issued by an arm of the court, is tantamount to a disobedience of the court's process." *Spight v. State*, 155 Ark. 26, 243 S.W. 860, 860 (1922).

The evasion of service here reflects particular "bad faith," *Two Men & a Truck Int'l, Inc. v. Clete, Inc.*, 2009 WL 899698, at *1 (W.D.N.C. Mar. 26, 2009), and was especially obstructive of this Court's truth-seeking function, given that Geographic Strategies and Mr. Oldham knew they possessed material evidence. As noted above, Stephanie Hofeller testified that Mr. Oldham took Dr. Hofeller's laptop and desktop computers from her parents' home. Ex. M at 26:16-

27:15. Plaintiffs’ subpoenas to Geographic Strategies and Mr. Oldham specifically requested “[a]ny computers used to draw the 2011 Plans and/or the 2017 Plans, including computers previously owned by Dr. Thomas Hofeller.” Ex. C, Attachment to Geographic Strategies Subpoena at 5; Ex. D, Attachment to Oldham Subpoena at 5. Geographic Strategies and Mr. Oldham thus had materials directly responsive to Plaintiffs’ subpoenas, which almost certainly contained documents pertinent to this case. Mr. Oldham himself also had important information given his role in helping to create the 2011 Plans, and Plaintiffs would have asked him about that work at his deposition. There is no excuse for ever evading subpoenas lawfully issued through the Court’s process, but the fact that Geographic Strategies and Mr. Oldham did so to withhold material evidence in this case renders their conduct all the more serious.

Having flouted this Court’s order finding good cause to authorize the subpoenas—and having avoided submitting to the process of this Court—Geographic Strategies and Mr. Oldham should not be heard now to invoke this Court’s jurisdiction in pursuit of equitable relief, namely the discretionary treatment of materials as confidential under Rules 26(c) or 45(c)(7). “An order under Rule 26(c) is . . . discretionary,” *Williams v. State Farm Mut. Auto. Ins. Co.*, 67 N.C. App. 271, 273, 312 S.E.2d 905, 907 (1984), and an order “quash[ing] or modif[ying]” a subpoena under Rule 45(c) is likewise “within the sound discretion of the trial court,” *Kilgo v. Wal-Mart Stores, Inc.*, 138 N.C. App. 644, 649, 531 S.E.2d 883 (2000). For the Court “to exercise discretion in [Geographic Strategies and Mr. Oldham’s] favor under the circumstances would reward them for their inexcusable conduct in failing, by refusing, to receive [service].” *Morrissey v. Crabtree*, 143 F. Supp. 105, 106 (M.D.N.C. 1956) (refusing to grant discretionary relief to party that “avoid[ed] service”); *see also, e.g., Patel v. S. Brokers, Ltd.*, 289 S.E.2d 642, 644-45 (S.C. 1982) (party that “wilfully and deliberately refused to accept [service]” by “refusing to

accept a letter known to contain” legal process could not “now be heard to complain” about not being involved in litigation); *McKellar v. State Farm Fire & Cas. Co.*, 2016 WL 304759, at *8 (E.D. Mich. Jan. 26, 2016) (refusing to consider affidavit from party who repeatedly “evaded service”).

Geographic Strategies’ motion seeking discretionary relief conceals the company’s and Mr. Oldham’s earlier evasion of service. In the affidavit Mr. Oldham submits in support of Geographic Strategies’ motion, he asserts: “Although I am informed attorneys for the Plaintiffs had issued a subpoena for Geographic Strategies, LLC, prior to this controversy, I have never been served with the subpoena.” Oldham Aff. ¶ 11. What Mr. Oldham fails to disclose is that he received copies of all three subpoenas via email, and the only reason he has “never been served with the subpoena” is that he evaded service in multiple ways on multiple occasions.

Simply put, “allowing a party to evade service of process, without suffering any adverse consequences, would undermine the integrity of the judicial process, and defeat the fair and efficient administration of justice.” *Kronenthal v. B-Dry Sys., Inc.*, 1999 WL 961278, at *4 (Ohio Ct. App. June 30, 1999); *accord Application of Barbara*, 14 Misc. 2d 223, 228 (N.Y. Sup. Ct. 1958), *aff’d*, 7 A.D.2d 340 (N.Y. App. Div. 1959) (“Evasion and willful refusal of a witness to accept lawful process of a court or a duly constituted commission cannot be countenanced without encouraging resistance to such process and disrespect for law.”).

Geographic Strategies and Mr. Oldham obstructed the administration of justice in this case and should now face consequences. They should not be permitted to sidestep the authority of this Court when it is inconvenient for them, and then turn around and invoke the Court’s authority when they want relief. The Court should hold that Geographic Strategies and Mr. Oldham’s actions preclude them from pursuing the discretionary relief sought in their motion.

II. In Any Event, Geographic Strategies Has Not Met Its Burden to Justify Designating Any of the Hofeller Files, Much Less All of Them, as “Highly Confidential”

Even setting aside Geographic Strategies’ evasion of service, the Court should deny the unsubstantiated and blunderbuss relief Geographic Strategies seeks—namely, an order designating “all of the Hofeller files” as Highly Confidential. Mot. for Leave at 1. A party seeking a protective order bears the burden to establish—as to each and every document for which the party seeks protection—both a legal interest and a protectable confidentiality interest. Geographic Strategies cannot conceivably meet this burden with respect to *all* of the Hofeller files, because Geographic Strategies by its own admission lacks *any* legal interest at all in a majority of those files. For this reason alone, an order designating all of the Hofeller files as Highly Confidential, as Geographic Strategies unreasonably requests, would run afoul of the most basic principles of discovery. To the extent Geographic Strategies may have some legal interest in some of the Hofeller files, the company still falls far short of meeting its burden to justify a protective order as to any file. Geographic Strategies does not identify even a single file in which it claims a cognizable confidentiality interest, much less substantiate such a claim.

A. Geographic Strategies Bears the Burden to Establish a Legal Interest and Confidentiality Interest in Every Document for Which It Seeks Protection

Geographic Strategies invokes both Rules 26(c) and 45(c)(7) in support of its request for a protective order designating all of the Hofeller files as Highly Confidential. Mot. for Leave 2; Mot. to Designate 6. Rule 45(c)(7) is unavailable because a request to modify a subpoena “must be raised before the time for compliance.” *Kilgo*, 138 N.C. App. at 649. Regardless, under either rule, Geographic Strategies “has the burden” of establishing “good cause” “to justify” the particular protection it seeks. *Analog Devices, Inc. v. Michalski*, No. 01 CVS 10614, 2006 WL 3287382, at *13 (N.C. Super. Nov. 1, 2006) (Rule 26(c)); *see Hardin v. Belmont Textile Mach. Co.*, 2007 WL 2300795, at *4 (W.D.N.C. Aug. 7, 2007) (party seeking to quash subpoena “bears

a heavy burden”). To obtain any confidentiality protections in this matter—and again, assuming the Court is willing to overlook the evasion of service—Geographic Strategies must establish both that it has a legal interest in the specific files for which it seeks a confidentiality designation, and that those files are either privileged or contain “trade secret[s] or other confidential research, development, or commercial information.” N.C. R. Civ. P. 45(c)(7); *see* N.C. R. Civ. P. 26(c) (similar); *Window World of Baton Rouge, LLC v. Window World, Inc.*, 2018 WL 3062191, at *3 (N.C. Super. June 19, 2018).

Specifically, to obtain a protective order under Rule 26(c), “[a] party asserting good cause bears the burden, *for each particular document it seeks to protect*, of showing that specific prejudice or harm will result if no protective order is granted.” *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1130 (9th Cir. 2003) (emphasis added). The party must be “seeking to protect a personal privilege or right.” *City of Almaty, Kazakhstan v. Ablyazov*, 2019 WL 275701, at *2 (S.D.N.Y. Jan. 22, 2019). “[T]he burden of proving confidentiality never shifts from the party asserting that claim.” *Parkway Gallery Furniture, Inc. v. Kittinger/Pa. House Grp., Inc.*, 121 F.R.D. 264, 268-69 (M.D.N.C. 1988). To “overcome the presumption” that materials produced in discovery are not subject to restriction, “the party seeking the protective order must show good cause by demonstrating a particular need for protection” as to every document. *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test.” *Id.*

Likewise, under Rule 45, a party lacks standing to seek relief relating to a third-party subpoena unless the party establishes both a legal interest and a protectable confidentiality interest in each document for which the party seeks relief. *See Window World*, 2018 WL

3062191, at *3 (establishing privilege or trade secret protection is a limited exception to the rule that parties “typically lack standing to contest third-party subpoenas”); *Joiner v. Choicepoint Servs., Inc.*, 2006 WL 2669370, at *4 (W.D.N.C. Sept. 15, 2006) (citation omitted) (party “has no standing” to challenge a third-party subpoena “[a]bsent a specific showing of a privilege or privacy”); *United States v. Idema*, 118 F. App’x 740, 744 (4th Cir. 2005) (right or privilege at issue must be “personal” to the objecting party).

B. Geographic Strategies Cannot Meet Its Burden To Justify Confidential Treatment of All of the Hofeller Files Because the Company Has No Legal Interest at All in a Majority of the Files

Despite Geographic Strategies’ sweeping request to designate “all of the Hofeller Files” as Highly Confidential, Mot. for Leave at 1, Geographic Strategies acknowledges that it has no legal interest at all in most of the files. The company does not identify a single document that reflects work Dr. Hofeller performed on behalf of Geographic Strategies, and based on admissions in the company’s own motion, a majority of documents in the Hofeller files could not have been work done for Geographic Strategies. That alone precludes Geographic Strategies’ request for a protective order over “the entirety of the Hofeller Files,” Mot. to Designate at 2, since Geographic Strategies lacks standing to seek confidential treatment of materials in which the company has no legal interest.

Based solely on admissions in Geographic Strategies’ motion and the accompanying affidavit of Mr. Oldham, it is undisputed that the following categories of files on the devices are documents that Dr. Hofeller did *not* create or possess on behalf of Geographic Strategies:

1. Work Done in Drawing North Carolina Redistricting Plans: A substantial portion of the Hofeller files reflect documents that Dr. Hofeller produced in developing North Carolina’s 2017 state House and Senate plans and 2016 congressional plan—likely thousands or even tens of thousands of the documents. Geographic Strategies admits that it does not have any legal

interest in such documents relating to the 2017 Plans, noting that “it is doubtful that Geographic Strategies owns any documents relevant to this case.” Mot. to Designate at 8. For good reason: Dr. Hofeller’s contracts with the General Assembly to draw both the 2017 Plans and North Carolina’s 2016 congressional plan make clear that Dr. Hofeller himself was retained personally to draw these plans in his *individual* capacity. See Exs. R, S. The contracts deem Dr. Hofeller a “legislative contractor and consultant,” *id.*, and consistent with that designation, Dr. Hofeller submitted invoices for his work in his individual capacity, *see, e.g.*, Ex. T.

What’s more, Dr. Hofeller’s contracts to draw all three sets of plans specify that “all drafting and information requests to [Dr. Hofeller] and documents prepared by [Dr. Hofeller] concerning redistricting *shall no longer be confidential and shall become public records* upon the act establishing the relevant district plan becoming law.” Exs. R, S (emphasis added). Thus, “all . . . documents” that Dr. Hofeller “prepared” in developing the 2017 Plans and the 2016 congressional plan lost any confidentiality and became “public records” upon the passage of those plans by the General Assembly. Not only does Geographic Strategies lack any legal interest in these files, but in seeking to designate them Highly Confidential, Geographic Strategies is attempting to conceal public records that belong to the people of North Carolina.

2. Work Done in Drawing Redistricting Plans in Other States: Mr. Oldham similarly admits in his affidavit that “[w]hen Dr. Hofeller worked . . . as a plan drafter” in other states, “he was hired individually” and not “under the auspices of Geographic Strategies.” Oldham Aff. ¶ 6. According to public news reports (and Legislative Defendants’ own statements in this case), Dr. Hofeller was retained to draw legislative plans in a number of states other than North Carolina. Geographic Strategies has no legal interest at all in documents relating to this work.

3. Work Done as an Expert Witness: Mr. Oldham also admits in his affidavit that when Dr. Hofeller “performed expert witness services . . . in redistricting litigation, . . . he was hired individually by either the jurisdiction or counsel for the client engaged in the litigation,” and “[n]o expert witness work was done under the auspices of Geographic Strategies.” Oldham Aff. ¶ 6. According to Dr. Hofeller’s publicly available resume, he served as an expert witness in more than 12 cases just since 2010.⁵ Geographic Strategies has no legal interest in any of the Hofeller files relating to this work. (Regardless, separate from any issue concerning Geographic Strategies, Plaintiffs’ counsel have taken careful prophylactic measures to avoid reviewing files that could possibly be subject to a valid privilege claim based on Dr. Hofeller’s expert work.)

4. Files Pre-Dating June 2011: Mr. Oldham asserts in his affidavit that he formed Geographic Strategies in 2011. Oldham Aff. ¶ 1. Records obtained from the South Carolina Secretary of State’s office indicate that the company filed its Articles of Incorporation on June 16, 2011. *See* Ex. O. Geographic Strategies obviously has no legal interest in documents that precede this date. Plaintiffs estimate that tens of thousands of the Hofeller files pre-date June 16, 2011, and yet Geographic Strategies seeks a protective order over all of these files.

The categories of files just listed are the ones over which Geographic Strategies lacks standing to seek a protective order *based solely on the admissions* in Geographic Strategies’ own motion and Mr. Oldham’s affidavit. There are undoubtedly many more files over which the company also has no conceivable legal interest.⁶ Geographic Strategies thus lacks standing to

⁵ Resume of Thomas Brooks Hofeller, Ph.D., <https://moritzlaw.osu.edu/electionlaw/litigation/documents/NC1973.pdf>

⁶ Geographic Strategies’ assertion at various points that Dr. Hofeller’s “backup” drives—meaning the storage devices themselves—“belonged to the LLC and its clients,” Mot. to Designate 4, is unsubstantiated and noncredible. Mr. Oldham’s affidavit states that the “backups in Dr. Hofeller’s possession belonged to the LLC and to its clients.” Oldham Aff. ¶ 8. This affidavit should be stricken from the record and disregarded by the Court because Mr. Oldham, a

request the relief sought in its motion—categorically designating files in which it has no interest at all as Highly Confidential. The Court should deny the motion for this reason alone.

Recognizing that its overbroad request is legally unsustainable, Geographic Strategies asserts that it wishes only to “*initially* . . . designate the entirety of the Hofeller Files as Highly Confidential.” Mot. to Designate at 2 (emphasis added). The company asserts that a blanket designation “would prohibit the Plaintiffs and those in privity with them from continuing to publish Geographic Strategies’ confidential trade secrets to the world through leaking this data to the media.” *Id.* Geographic Strategies states that it needs an “immediate designation” to “preserve the status quo.” *Id.* at 9. Geographic Strategies apparently has in mind a process in which everything would be designated Highly Confidential, Geographic Strategies and Plaintiffs would meet and confer about every document, and Plaintiffs would be required to seek a de-designation order for every document over which there is a dispute. Mot. to Designate at 10-11.

Geographic Strategies offers no legal support for this approach, and there is none. *First*, the current “status quo” is the correct one: documents obtained lawfully in discovery are *not* confidential unless the party asserting a privilege or other protectable confidentiality interest meets its burden of establishing that the privilege or protection applies. Geographic Strategies’ proposal flips on its head the ordinary “presumption” that discovery materials are non-confidential. *Cipollone*, 785 F.2d at 1121. Courts may “only grant as narrow a protective order as is necessary under the facts,” *Brittain v. Stroh Brewery Co.*, 136 F.R.D. 408, 412 (M.D.N.C. 1991), and Geographic Strategies does not cite a single case in which a court has designated *all*

lawyer, evaded service of a lawful subpoena in this case. Regardless, Mr. Oldham’s unsupported assertion is unsustainable and noncredible on its face. The backup drives contained numerous files that Mr. Oldham admits are work files that have nothing to do with Geographic Strategies, *see id.*, and—as this Court is well aware—many personal files relating to Dr. Hofeller, his wife, and his daughter. The devices themselves plainly are not the property of Geographic Strategies.

documents produced by a third party as confidential on the theory that some of them may be confidential, over the recipient's objection. Geographic Strategies' request is especially unwarranted given that so many of the Hofeller files (*i.e.*, all those involving the 2016 and 2017 plans) are "public records" under Dr. Hofeller's contracts with the General Assembly and under North Carolina law. G.S. §120-133.

Second, while Geographic Strategies castigates Plaintiffs' counsel for "unilaterally ... filing" certain census-related documents "on the public docket in the Southern District of New York," Mot. to Designate at 12, it is well-established that "the potential use of the fruits of discovery in other litigation is not, alone, a basis for a protective order." *Ohio Valley Envtl. Coal. v. Elk Run Coal Co.*, 291 F.R.D. 114, 122 (S.D. W. Va. 2013). To the contrary, sharing discovery materials with other litigants is entirely proper and in the public interest. "The courts considering the matter 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). Indeed, "dissemination of information to litigants in other forums is often encouraged for purposes of judicial economy." *FTC v. Digital Interactive Assocs., Inc.*, 1996 WL 912156, at *3 (D. Colo. Nov. 18, 1996); accord *United States v. Hooker Chemicals & Plastics Corp.*, 90 F.R.D. 421, 426 (W.D.N.Y. 1981); *Patterson v. Ford Motor Co.*, 85 F.R.D. 152, 153-54 (W.D. Tex. 1980).

Consistent with this body of case law, Plaintiffs shared a limited of documents from the Hofeller files with litigants in the census cases. Notably, no one has claimed that any of the census-related documents submitted in the census litigation were subject to any claim of privilege or confidentiality. They were not. The key files included a unpublished study by Dr. Hofeller that was explicitly marked as not containing legal advice, and was provided by

Dr. Hofeller to a news website, not involving a lawyer. There was nothing improper about Plaintiffs sharing these non-privileged materials obtained via discovery with litigants in another case where they were highly significant, and there would be nothing improper about Plaintiffs sharing other non-privileged Hofeller files with parties in other cases where the files are relevant.

In short, “[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.” *Parkway Gallery*, 121 F.R.D. at 268-69. Geographic Strategies has not met this standard.

If anything, Plaintiffs’ decision to share certain Hofeller files relating to the census with plaintiffs in ongoing census-related cases counsels strongly *against* designating the Hofeller files as confidential. The federal district court in New York observed that the materials from the Hofeller files raise “serious” questions about litigation conduct in the census citizenship question case. 6/5/19 Hr’g Tr. 4, *New York v. Dep’t of Commerce*, No. 18-cv-2921 (S.D.N.Y.). Just days ago, a different federal district court in Maryland ruled that the same census-related materials from the Hofeller files warranted re-opening the federal court’s judgment to consider whether the addition of a citizenship question to the census violates the federal Equal Protection Clause and federal civil rights laws. The federal court found that this “new evidence shows that a longtime partisan redistricting strategist, Dr. Thomas Hofeller, played a potentially significant role in concocting the Defendants’ pretextual rationale for adding the citizenship question,” and this “new evidence potentially connects the dots between a discriminatory purpose—diluting Hispanics’ political power—and Secretary Ross’s decision.” *Kravitz v. United States Dep’t of Commerce*, --- F. Supp. 3d ---, 2019 WL 2576353, at *2, *4 (D. Md. June 24, 2019). The federal

court further found that the evidence found in the Hofeller files “casts doubt on the plausibility of [the] testimony” of Secretary Ross’ advisor on census issues. *Id.* at *5.

Although Geographic Strategies accuses Plaintiffs of “publish[ing] Geographic Strategies’ confidential trade secrets to the world,” Mot. to Designate at 2; *accord id.* at 12, Geographic Strategies does not assert any ownership or confidentiality interest in any of the Hofeller files that have been filed with the federal courts or that Plaintiffs provided to their experts in this case. Indeed, Geographic Strategies does not identify a single “confidential trade secret” that Plaintiffs have published to *anyone*, much less “the world.”⁷

Geographic Strategies’ proposed approach is not only legally unjustified and factually unsupported, it appears to be designed to conceal information of public importance that is neither owned by Geographic Strategies nor confidential to anyone. By way of example, under Geographic Strategies’ approach, Plaintiffs would have been prohibited from submitting the census-related files to the federal courts in the census litigation, even though those files were indisputably critical to the resolution of that litigation, are not owned by Geographic Strategies, and on their face are not confidential. That is an unjustifiable outcome, but it is precisely what Geographic Strategies seeks.

⁷ Geographic Strategies asserts that Stephanie Hofeller believed that Plaintiffs’ counsel would not use the materials she produced in discovery in any other case, Mot. to Designate at 11—an argument that echoes Legislative Defendants’ argument in their response to Plaintiffs’ June 6 motion regarding the Hofeller files. Geographic Strategies has no standing to assert any objection on behalf of Stephanie Hofeller. In any event, as Plaintiffs will detail tomorrow in their reply to Legislative Defendants’ response, Ms. Hofeller has made clear through her attorney that she has no objection to the use of her father’s files in the census litigation. Geographic Strategies also asserts that Plaintiffs subpoenaed “storage devices ... with full knowledge” that they contained documents unrelated to North Carolina. Mot. to Designate at 11. This is also untrue, as Plaintiffs will detail in their forthcoming reply to Legislative Defendants’ response.

Geographic Strategies' proposal is also functionally unworkable: it would require this Court to referee the status of tens of thousands of documents, in perpetuity. Discovery materials are presumptively non-confidential in part because it is far less burdensome to require the party seeking confidential treatment to justify such treatment for a small number that may potentially be confidential, rather than to designate an entire giant corpus of materials as confidential even though they are not, and require the Court to pick through each one.

Geographic Strategies has no standing to seek a designation of the entirety of the Hofeller files as Highly Confidential, such relief is unwarranted, and this Court should reject it outright.

C. Geographic Strategies Has Not Met Its Burden To Justify Confidential Treatment Even for Unidentified Documents in Which Geographic Strategies May Hold Some Legal Interest

Even with respect to the unspecified documents that Dr. Hofeller may have created on behalf of Geographic Strategies, the company has not met its burden to establish either an ownership interest or any cognizable confidentiality interest. Rather, all of Geographic Strategies' assertions are "[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning," and therefore insufficient to justify a protective order. *Cipollone*, 785 F.2d at 112.

First, as to ownership, Geographic Strategies does not establish any legal ownership over any of the files that Dr. Hofeller left to his wife, and that his wife gave to her daughter, Stephanie Hofeller. Geographic Strategies does not offer any support other than an unsubstantiated allegation for its argument that all computer files possessed by Dr. Hofeller that related to work for Geographic Strategies "reverted to the surviving members of" Geographic Strategies upon Dr. Hofeller's death. Mot. to Designate at 4. Geographic Strategies cites the declaration of Mr. Oldham, which this Court should disregard because Mr. Oldham evaded service of lawful subpoenas in this case. *See McKellar*, 2016 WL 304759, at *8. But regardless, Mr. Oldham's

affidavit is insufficient. Mr. Oldham points to a “mutual survivorship agreement,” Oldham Aff. ¶ 2, but he has not produced a copy of such an agreement. As the Court of Appeals recently observed, “a party’s personal interpretation of what a contract precludes without any showing as to the actual contents of the contract is not objective indicia, nor is it a sound legal basis for a privilege. It is the functional equivalent of a mere allegation.” *Taylor v. Perni*, --- S.E.2d ---, 2019 WL 2180371, at *3 (N.C. Ct. App. May 21, 2019). “To allow a party’s motion to quash . . . based only upon his or her claim that the mere existence of a contract protects information to be disclosed, without more, would be to allow a party’s incantation of protection as an abracadabra to which [we] must defer judgment.” *Id.* (citation omitted).

Under these circumstances, to the extent the Court is inclined to overlook Geographic Strategies’ unclean hands and consider Geographic Strategies’ motion at all, the Court should require Geographic Strategies to produce the purported mutual survivorship agreement, the LLC agreement, and any other agreements for review by the Plaintiffs.

Second, even assuming Geographic Strategies could establish an ownership interest in any of the files, the company has not met its additional burden to establish that any such files are entitled to protection as “Highly Confidential” under the Consent Protective Order. Geographic Strategies vaguely asserts that the Hofeller files contain Geographic Strategies’ “business records” that contain “confidential research and analysis that Geographic Strategies performed for its clients,” Mot. to Designate at 6, or that contain “proprietary methods of analysis,” *id.*, by which Geographic Strategies apparently means “proprietary methods of legal analysis of redistricting plans,” Oldham Aff. ¶ 5, whatever those could be. Geographic Strategies asserts that its “confidential methods” give it a “competitive advantage” over unspecified other

companies. Mot. to Designate at 6. Geographic Strategies also asserts that there is a “substantial likelihood” that the Hofeller files contained privileged files of its unspecified clients. *Id.* at 7.

All of these assertions are wholly vague and conclusory. Merely invoking magic words like “competitive advantage” or “proprietary” or “privilege” does not establish an entitlement to protection. North Carolina “caselaw makes clear that mere assertions of the existence of a privilege or protection, without more, do not establish such.” *Taylor*, 2019 WL 2180371, at *2. “The burden is always on the party asserting the privilege to demonstrate each of its essential elements. This burden may not be met by mere conclusory assertions. Rather, sufficient evidence must be adduced to establish the privilege with respect to each disputed item.” *Gunter by Zeller v. Maher*, 826 S.E.2d 557, 561 (N.C. Ct. App. 2019) (citations and ellipses omitted); *see also VisionAIR, Inc. v. James*, 167 N.C. App. 504, 511 (2004) (“sweeping and conclusory statements are insufficient to state a claim for misappropriation of trade secrets”); *Brittain*, 136 F.R.D. at 412 (party seeking protective order for trade secrets or other commercial information “must make a particular request and a specific demonstration of facts in support of the request as opposed to conclusory or speculative statements”).

The bottom line is that Geographic Strategies does not identify a single specific document in which the company has any legal interest, let alone a protectable confidentiality interest. Geographic Strategies therefore cannot establish good cause for a protective order with respect to any of the Hofeller files. In a footnote, Geographic Strategies argues that it “has not identified particular documents” because “Geographic Strategies does not have access to the documents.” Mot. to Designate at 7 n.3. But that is not accurate for multiple reasons. For one, Geographic Strategies asserts elsewhere in its brief that the devices Ms. Hofeller produced “includ[ed] complete backups of [Dr. Hofeller’s] Geographic Strategies’ laptop.” *Id.* at 2; *see*

also id. at 1. If that is so, then Geographic Strategies has access to all of the relevant files that Plaintiffs received, since Mr. Oldham reportedly took Dr. Hofeller's computers from Dr. Hofeller's home. Ex. M at 26:11-27:15.

Geographic Strategies could also have requested a copy of the files from the Plaintiffs at any time. The company presumably did not do so because it previously evaded service of Plaintiffs' lawful subpoena, and did not wish to emerge in this case until discovery was over. Alternatively, Geographic Strategies could have requested a copy of the Hofeller files from Legislative Defendants or Intervenor Defendants. Legislative Defendants and Intervenor Defendants have had complete copies since the beginning of May, and other than the 1,001 files designated Highly Confidential under this Court's May 1, 2019 order, there is no confidentiality restriction over any of the files. At a minimum, Geographic Strategies could have obtained an index of the files from Legislative Defendants.

If Geographic Strategies had wanted to meet its burden to identify specific files over which the company claims a legal interest and a protectable confidentiality interest, it has had multiple avenues to do so for several months. But instead, Geographic Strategies chose to suddenly jump into this case and demand that the entire corpus of files be designated Highly Confidential, even though the company has no conceivable interest in tens of thousands of those files, at a minimum.

Geographic Strategies' motion should be denied in its entirety, and the company should be barred from participating in this case and seeking any relief with respect to any of the Hofeller files, because of its bad faith evasion of this Court's lawful subpoena process. The motion is also untimely, as described below. But if the Court is inclined to nonetheless consider the motion, the Court could order Legislative Defendants or Plaintiffs to produce the Hofeller files to

Geographic Strategies at Geographic Strategies' expense (except for the 1,001 sensitive personal files). If Geographic Strategies then identifies any documents over which it believes it has a legitimate claim to protection, and if the Court is inclined to overlook the evasion of lawful subpoenas in this case and the company's untimeliness (*see infra*), the company can come back to this Court with a proper motion.

III. The Court Should Deny Geographic Strategies' Motion as Untimely

The Court should also deny Geographic Strategies' motion for the independent reason that it is untimely. *See* N.C. R. Civ. P. 24(a)(2) (permitting intervention only “[u]pon timely application”); *Loman Garrett, Inc. v. Timco Mechanical, Inc.*, 93 N.C. App. 500, 502-03, 378 S.E.2d 194, 196 (1989). Geographic Strategies filed its motion to intervene on Monday, June 17, 2019—less than a month before trial will begin. The subpoena to Ms. Hofeller was served more than four months ago, on February 13, 2019. Plaintiffs received documents in response to the subpoena on March 13, and notified Legislative Defendants on March 20—three months ago—in accordance with Rule 45(d1). The press reported on the existence of these files on April 30, 2019,⁸ and it is highly likely that Mr. Oldham and Geographic Strategies knew about the existence of the subpoena and the files from Legislative Defendants' counsel much earlier.

Geographic Strategies and Mr. Oldham do not disclose in their motion when they learned about the subpoena to Ms. Hofeller. The Court should ask them that question before deciding whether the instant motion is timely, and should require Geographic Strategies and Mr. Oldham

⁸ *See, e.g.*, Dan Kane, *Gerrymandering Challengers Handed 75,000 Files From Computer of a Dead Redistricting Guru*, *The News & Observer* (April 30, 2019), <https://www.newsobserver.com/news/politics-government/article229860489.html>; Melissa Boughton, *Gerrymandering lawsuit stunner: Daughter of deceased GOP mapmaker turns over his documents to Common Cause*, *NC Policy Watch* (April 30, 2019), <http://www.ncpolicywatch.com/2019/04/30/gerrymandering-lawsuit-stunner-daughter-of-deceased-gop-mapmaker-turns-over-his-documents-to-common-cause/>.

to produce their communications with Legislative Defendants and Legislative Defendants' counsel concerning the subpoena. But even if Geographic Strategies was only on notice by April 30, when the first press reports came out concerning the files, it should have filed the instant motion then. Their delay is entirely unjustified and unexplained, and it has caused prejudice to Plaintiffs—who must now litigate Geographic Strategies' motion just a few weeks before trial, at the same time as Plaintiffs are responding to motions *in limine* and attempting to prepare for trial. The relief Geographic Strategies seeks—namely to designate all of the Hofeller files as Highly Confidential and require Plaintiffs to individually ask the Court to de-designate any file before it can be used at trial—is unjustified and inappropriate. But the timing of this request less than a month before trial is also highly prejudicial.

The timing of this motion is additionally prejudicial because, if Geographic Strategies had attempted to appear in this case in March, April, or even May 2019, Plaintiffs would have asked this Court to enforce the subpoenas. To be clear, if the Court grants *any* relief in favor of Geographic Strategies, the Court should enforce the subpoenas now. *See infra* § IV. But it is three weeks before trial and it will be difficult for Plaintiffs to review Geographic Strategies' and Mr. Oldham's documents in time. At a minimum, it would require Plaintiffs to expend significant resources at a time when Plaintiffs are intensely focused on preparing for trial and addressing the other matters before this Court. The timing alone is reason enough to deny Geographic Strategies' motion in its entirety.

IV. If Geographic Strategies and Mr. Oldham Are Permitted to Participate in This Case, They Should Be Ordered to Comply with the Subpoenas Forthwith

For all the reasons above, the Court should deny Geographic Strategies' motion. But if the Court does permit Geographic Strategies and Mr. Oldham to participate in this case in any way, they should be ordered to immediately comply with Plaintiffs' subpoenas. One remedy for

the evasion of service is that the relevant documents are deemed served as of the date that the recipient evaded service. *See, e.g., Currie*, 112 F.R.D. at 409-10. That remedy would be particularly warranted here given that Geographic Strategies and Mr. Oldham actually received the subpoenas no later than March 6, 2019, when Plaintiffs e-mailed the subpoenas to Mr. Oldham. Ex. H; *see, e.g., Application of Barbara*, 7 A.D.2d 340, 342-43, 183 N.Y.S.2d 147, 150 (1959); *Siemens Med. Sols. USA, Inc. v. Sequoia Techs.*, 2006 WL 8441197, at *7 (D. Ariz. Feb. 6, 2006), *report and recommendation adopted*, 2006 WL 8441196 (D. Ariz. Mar. 8, 2006); *see also Glob. Impex, Inc. v. Specialty Fibres LLC*, 77 F. Supp. 3d 1268, 1271 (N.D. Ga. 2015).

If the subpoenas are deemed served as of March 6, 2019, Geographic Strategies and Mr. Oldham will have “waive[d] [their] right to object” to the subpoenas on any basis, including on grounds of purported privilege, because they did not respond to the subpoenas by the subpoenas’ return dates. *Harrington Mfg. Co. v. Powell Mfg. Co.*, 26 N.C. App. 414, 415, 216 S.E.2d 379, 380 (1975); *accord Warren v. Sessoms & Rogers, P.A.*, No. 7:09-CV-00159-BO, 2012 WL 13024154, at *4 (E.D.N.C. Nov. 26, 2012); *United States v. \$43,660.00 in U.S. Currency*, 2016 WL 1629284, at *5 (M.D.N.C. Apr. 22, 2016); *Phillips v. Dallas Carriers Corp.*, 133 F.R.D. 475, 477 (M.D.N.C. 1990).

Geographic Strategies and Mr. Oldham would need to immediately produce all records responsive to the document subpoenas, including “[a]ny computers used to draw the 2011 Plans and/or the 2017 Plans, including computers previously owned by Dr. Thomas Hofeller.” Ex. C, Attachment to Geographic Strategies Subpoena at 5; Ex. D, Attachment to Oldham Subpoena at 4. Mr. Oldham would also need to sit for an immediate deposition.

CONCLUSION

Geographic Strategies' motion should be denied.

Respectfully submitted this the 26th day of June, 2019

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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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Counsel for the Legislative Defendants

This the 26th day of June, 2019.

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

EXHIBIT A

NORTH CAROLINA

WAKE COUNTY

COMMON CAUSE; et al.,

FILED

2019 FEB 18 PM 3:58

WAKE COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

18-CVS-14001

BY

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' MOTION FOR
COMMISSION**

NOW COME Plaintiffs, by and through the undersigned counsel, and move the Court for a Commission authorizing the issuance of out-of-state Subpoenas for the purpose of compelling the appearance at deposition and for production of documents directed to the following persons:

Dalton Oldham
1119 Susan St.
Columbia, SC 29210
(appearance at deposition and production
of documents)

Geographic Strategies LLC
c/o Dalton L. Oldham
1119 Susan St.
Columbia, SC 29210
(production of documents only)

In support of this Motion, Plaintiffs show the Court that Dalton Oldham and Geographic Strategies have documents and information in their possession, custody or control relevant to the subject matter involved in this action, and the information to be requested is reasonably calculated to lead to the discovery of admissible evidence. Counsel for Plaintiffs has read the applicable rules and procedures of South Carolina and will comply with those rules and procedures in obtaining this discovery. Counsel for Plaintiffs has conferred with all other parties and counsel for the State Defendants consent to this Motion while counsel for Legislative Defendants do not consent. The Plaintiffs request that this Court issue an Order for a Commission to allow the appropriate authorities in the State of South Carolina to issue

subpoenas pursuant to Rule 28(d) of the South Carolina Rules of Civil Procedure requiring Dalton Oldham to appear for deposition and to produce complete copies of the documents detailed in Exhibit A hereto and requiring Geographic Strategies to produce complete copies of the documents detailed in Exhibit B hereto.

This matter arises out of the North Carolina State House and Senate districts drawn and enacted in 2011 and 2017. Specifically, Plaintiffs challenge the constitutionality of the districts under the North Carolina Constitution. Mr. Oldham was the business partner of the map drawer, Thomas Hofeller, in a business called Geographic Strategies, LLC. Plaintiffs understand and believe that Mr. Oldham and Geographic Strategies were involved with the drafting of the plans in 2011 and 2017 and therefore would have information and materials relevant to Plaintiffs' claims. Plaintiffs also understand that Mr. Oldham and/or Geographic Strategies took possession of materials that were previously in the possession of Dr. Hofeller, and those materials are likely relevant to Plaintiffs' claims in this matter.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order for a Commission to allow the appropriate authorities in the State of South Carolina to issue subpoenas for the purpose of compelling the appearance at deposition and production of documents by Dalton Oldham and for the purpose of production of documents by Geographic Strategies, LLC pursuant to S.C.R.C.P. 28.

Respectfully submitted this the 18th day of February, 2019.

POYNER SPRUILL LLP

By:

Edwin M. Speas, Jr.

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by EMM with
permission

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*Counsel for Common Cause and the
Individual Plaintiffs*

* *Pro hac vice motions submitted*

ATTACHMENT TO SUBPOENA TO DALTON OLDHAM

INSTRUCTIONS

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

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



DEFINITIONS

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

1. "2011 Plans" mean the 2011 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in November 2011, including all drafts thereof.
2. "2017 Plans" mean the 2017 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in August 2017, including all drafts thereof.
3. "2011 Unchanged Districts" means the state legislative districts enacted by the General Assembly under the 2011 Plans that were not altered under the 2017 Plans, including all drafts thereof.
4. The "2017 Plans Criteria" refer to the criteria that the North Carolina House and Senate Redistricting Committees adopted for the 2017 Plans.
5. "Individual Defendants" refers to Senator Ralph E. Hise, Jr.; Representative David R. Lewis; President Pro Tempore Philip E. Berger; Speaker Timothy K. Moore; Chairman Andy Penry, Chairman of the North Carolina State Board of Elections and Ethics Enforcement; Joshua Malcolm, Vice-Chair of the North Carolina State Board of Elections & Ethics Enforcement; Ken Raymond, Secretary of the North Carolina State Board of Elections & Ethics Enforcement; Stella Anderson, Member of the North Carolina State Board of Elections & Ethics Enforcement; Damon Circosta, Member of the North Carolina State Board of Elections & Ethics Enforcement; Stacy "Four" Eggers IV, Member of the North Carolina State Board of Elections & Ethics Enforcement; Jay Hemphill, Member of the North Carolina State Board of Elections & Ethics Enforcement; Valerie Johnson, Member of the North Carolina State Board of Elections & Ethics Enforcement; John Lewis, Member of the North Carolina State Board of Elections & Ethics Enforcement; and their predecessors in office.
6. "Entity Defendants" refers to The State of North Carolina and the North Carolina State Board of Elections and Ethics Enforcement.
7. "Defendants" refers to the Individual Defendants and the Entity Defendants.
8. With respect to the Individual Defendants, "You" and "Your" refers to the Individual Defendants and their predecessors in office, attorneys, representatives, agents, and others acting on their behalf.
9. With respect to the Entity Defendants, "You" and "Your" refers to the Entity Respondents and all branches of government, including departments, agencies, committees, and subcommittees, as well as attorneys, representatives, members, employees, agents, and others acting on behalf of the Entity Defendants.

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

LIST OF DOCUMENTS AND THINGS TO BE PRODUCED
FOR PLAINTIFFS TO INSPECT AND COPY PURSUANT TO THIS SUBPOENA

1. All documents and communications referring or relating to the 2017 Plans, including, but not limited to:
 - (a) All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2017 Plans.
 - (b) All documents referring or relating to the 2017 Plans Criteria.
 - (c) All documents referring or relating to how each 2017 Plans Criterion was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
 - (d) All documents referring or relating to how each 2017 Plans Criterion affected the 2017 Plans, including any rule or principle guiding the use of each criterion in developing the 2017 Plans, or any specific choices made in constructing a district based on each criterion.
 - (e) All documents referring or relating to the prioritization or weighting of the 2017 Plans criteria in developing the 2017 Plans.
 - (f) All communications since January 1, 2015 with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2017 Plans.
 - (g) All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2017 Plans.
 - (h) All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2017 Plans.

2. All documents and communications since November 1, 2010 referring or relating to the 2011 Unchanged Districts, including, but not limited to:
 - (a) All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2011 Unchanged Districts.

- (b) All documents referring or relating to the criteria considered or using in creating the 2011 Unchanged Districts.
 - (c) All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
 - (d) All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts affected the 2011 Unchanged Districts, including any rule or principle guiding the use of each criterion in developing the 2011 Unchanged Districts, or any specific choices made in constructing a district based on each criterion.
 - (e) All documents referring or relating to the prioritization or weighting of each of the criteria considered or used in creating the 2011 Unchanged Districts.
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 - (h) All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2011 Unchanged Districts.
3. All documents and communications since January 1, 2015 not encompassed within Requests 1 or 2 that refer or relate to the development of new state legislative districts for the North Carolina House of Representatives and the North Carolina Senate.
 4. All non-privileged documents and communications since January 1, 2015 not encompassed within Requests 1, 2, or 3 that refer or relate to the litigation surrounding, or the legal status of, the 2011 Plans.
 5. Any computers used to draw the 2011 Plans and/or the 2017 Plans, including computers previously owned by Dr. Thomas Hofeller.

ATTACHMENT TO SUBPOENA TO GEOGRAPHIC STRATEGIES, LLC

INSTRUCTIONS

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

1. **BE ADVISED** that under Rule 37 of the North Carolina Rules of Civil Procedure, if you fail to respond to a request made herein under Rule 30, or if you give an evasive or incomplete response, the Plaintiffs may move for a court order compelling you to respond. If such motion is granted, the court may require you to pay the reasonable costs incurred in obtaining the order, including attorneys' fees. Failure to comply with such a court order may result in further sanctions or in contempt of court.
2. **Electronically-stored information:** This Subpoena includes requests to permit the forensic copying and examination of electronically stored information ("ESI"), as well as for the production of ESI. The purpose of obtaining ESI from you is to obtain all metadata, residual data, file fragments, and other information that is not reasonably accessible for forensic examination of authenticity. Any storage device that contains, or may contain, ESI requested shall be produced for forensic copying and examination. Forensic copying usually may be done on-site, without taking possession of your computing devices, at minimal inconvenience, cost, or interruption to you. The forensic copying will eliminate the need for you to search all storage devices or sift through a vast amount of information. Once forensic copies are made, the parties may agree on search terms to reduce costs and to preserve privacy of non-discoverable information.
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 - D. the type of document or communication (e.g., letter, memorandum, invoice, contract, etc.);
 - E. the name and address of any person currently in possession of the document or a copy thereof; and
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9. With respect to the Entity Defendants, "You" and "Your" refers to the Entity Respondents and all branches of government, including departments, agencies, committees, and subcommittees, as well as attorneys, representatives, members, employees, agents, and others acting on behalf of the Entity Defendants.

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11. "Communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons, by any means or mode of conveying information including, but not limited to, telephone, television, or telegraph or electronic mail.
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FOR PLAINTIFFS TO INSPECT AND COPY PURSUANT TO THIS SUBPOENA

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 - (b) All documents referring or relating to the 2017 Plans Criteria.
 - (c) All documents referring or relating to how each 2017 Plans Criterion was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
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 - (e) All documents referring or relating to the prioritization or weighting of the 2017 Plans criteria in developing the 2017 Plans.
 - (f) All communications since January 1, 2015 with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2017 Plans.
 - (g) All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2017 Plans.
 - (h) All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2017 Plans.

2. All documents and communications since November 1, 2010 referring or relating to the 2011 Unchanged Districts, including, but not limited to:
 - (a) All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2011 Unchanged Districts.

- (b) All documents referring or relating to the criteria considered or using in creating the 2011 Unchanged Districts.
 - (c) All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
 - (d) All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts affected the 2011 Unchanged Districts, including any rule or principle guiding the use of each criterion in developing the 2011 Unchanged Districts, or any specific choices made in constructing a district based on each criterion.
 - (e) All documents referring or relating to the prioritization or weighting of each of the criteria considered or used in creating the 2011 Unchanged Districts.
 - (f) All communications with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2011 Unchanged Districts.
 - (g) All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2011 Unchanged Districts.
 - (h) All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2011 Unchanged Districts.
3. All documents and communications since January 1, 2015 not encompassed within Requests 1 or 2 that refer or relate to the development of new state legislative districts for the North Carolina House of Representatives and the North Carolina Senate.
 4. All non-privileged documents and communications since January 1, 2015 not encompassed within Requests 1, 2, or 3 that refer or relate to the litigation surrounding, or the legal status of, the 2011 Plans.
 5. Any computers used to draw the 2011 Plans and/or the 2017 Plans, including computers previously owned by Dr. Thomas Hofeller.

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

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Michael McKnight
Alyssa Riggins
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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Alyssa.riggins@ogletree.com

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

This the 18th day of February, 2019.

Edwin M. Speas, Jr.
Edwin M. Speas, Jr. by E.M.M. with
permission

NORTH CAROLINA

WAKE COUNTY

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.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18-CVS-14001

**ORDER GRANTING PLAINTIFFS'
MOTION FOR COMMISSION**

THIS MATTER comes before the undersigned Three-Judge Panel upon the Plaintiffs' Motion for Commission authorizing the issuance of out-of-state subpoenas for the purpose of compelling the appearance at deposition and the production of documents.

IT APPEARS to the Court that Dalton Oldham and Geographic Strategies are likely to have documents and/or information in their possession that may be relevant to the subject matter involved in this action and the information sought is reasonably calculated to lead to the discovery of admissible evidence.

FOR GOOD CAUSE SHOWN, the Court finds that a Commission should be issued allowing the appropriate authorities in the State of South Carolina to issue and authorize service subpoenas directed to the following person/entity:

Dalton Oldham
1119 Susan St.
Columbia, SC 29210
(appearance at deposition and production
of documents)

Geographic Strategies LLC
c/o Dalton L. Oldham
1119 Susan St.
Columbia, SC 29210
(production of documents only)

This the ____ day of February, 2019.

The Honorable Paul C. Ridgeway
Superior Court Judge

NORTH CAROLINA

WAKE COUNTY

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.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18-CVS-14001

**COMMISSION AUTHORIZING
ISSUANCE OF OUT-OF-STATE
SUBPOENAS**

THIS MATTER is before the Court upon Plaintiffs' Motion for Commission.

IT APPEARS to the Court that Dalton Oldham and Geographic Strategies LLC have documents and/or information in their possession relevant to the case pending before it and the information sought is reasonably calculated to lead to the discovery of admissible evidence.

FOR GOOD CAUSE SHOWN, the Court finds that a commission should be issued allowing the appropriate authorities in the State of South Carolina to issue and authorize service subpoenas for the purpose of compelling the appearance at deposition and for production of documents to the following:

Dalton Oldham
1119 Susan St.
Columbia, SC 29210
(appearance at deposition and production
of documents)

Geographic Strategies LLC
c/o Dalton L. Oldham
1119 Susan St.
Columbia, SC 29210
(production of documents only)

This the ____ day of February, 2019.

The Honorable Paul C. Ridgeway
Superior Court Judge

EXHIBIT B

NORTH CAROLINA

WAKE COUNTY

COMMON CAUSE; et al.,

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

18-CVS-14001

2019 FEB 22 AM 9:50

WAKE CO., C.S.C.

BY _____
Plaintiffs,

v.

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

Defendants.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR COMMISSION**

THIS MATTER comes before the undersigned Three-Judge Panel upon the Plaintiffs' Motion for Commission authorizing the issuance of out-of-state subpoenas for the purpose of compelling the appearance at deposition and the production of documents.


IT APPEARS to the Court that Dalton Oldham and Geographic Strategies are likely to have documents and/or information in their possession that may be relevant to the subject matter involved in this action and the information sought is reasonably calculated to lead to the discovery of admissible evidence.

FOR GOOD CAUSE SHOWN, the Court finds that a Commission should be issued allowing the appropriate authorities in the State of South Carolina to issue and authorize service subpoenas directed to the following person/entity:

Dalton Oldham
1119 Susan St.
Columbia, SC 29210
(appearance at deposition and production
of documents)

Geographic Strategies LLC
c/o Dalton L. Oldham
1119 Susan St.
Columbia, SC 29210
(production of documents only)

This the 21 day of February, 2019.



The Honorable Paul C. Ridgeway
Superior Court Judge

EXHIBIT C



LEON L. LOTT, JR.
Sheriff

Richland County Sheriff's Department

Poyner Spruill
PO Box 1801
Raleigh, NC 27690

March 19, 2019

Re: Geographic Strategies, LLC

Dear Sir/Madam:

On 3/13/2019, this department received a civil paper from your office. Please find the enclosed Affidavit of Service/Non Service for the above reference case.

I am pleased to be of service and if my Department can assist you in the future, please call upon my Civil Process Division at (803) 576-3151.

Sincerely,

A handwritten signature in black ink, appearing to read "Leon Lott".

Leon Lott
Richland County Sheriff

MAR 25 2019

RICHLAND COUNTY SHERIFF'S DEPARTMENT



LEON L. LOTT, JR. Sheriff

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PLAINTIFF(S)

Common Cause

AFFIDAVIT OF SERVICE

vs.

DEFENDANT(S)

DAVID Lewis
TO: Geographic Strategies, LLC
1119 SUSAN ST. COLA, S.C. C/O DALTON Oldham

OR

NON-SERVICE
(DATE: 03/18/19)

(9:00 AM)

PERSONALLY APPEARED Before me P. Wilkes, duly sworn, says that he/she served, or attempted to serve, the following civil paper(s):

- Affidavit
- Complaint
- Cover Sheet
- Decree
- Notice
- Order
- Petition
- Plaintiff's Bond

- Restraining Order
- Rule to Show Cause
- Subpoena
- Subpoena Duces Tecum
- Summons
- Verification
- Other

on the defendant, Geographic Strategies, LLC as follows: C/O DALTON Oldham

() by personally handing the process to the defendant at _____, _____, S.C.
(Street) (City)

on _____
(Date/Time)

() by handing the process to _____, at _____,
(Name of Person Served/Relationship) (Street) (City)
S.C. on _____, a person of suitable age and discretion then residing in the
defendant's usual place of abode.

() by handing the process to _____, the registered corporate agent or officer of the
company at _____ and leaving him/her a copy of same on _____.
(Address) (Date/Time)

(X) WAS UNABLE to locate and serve the above process on the defendant, after diligent efforts by check-
ing the City/Telephone Directory, and going to the address given for the defendant, and by question-
ing persons in the vicinity of the address. THE PROCESS IS RETURNED UNEXECUTED.

(X) COMMENTS: Unable to serve prior to court date.

Deponent knows the person served to be the defendant and Deponent is not a party to the action.

SWORN TO Before me this _____ day of March, 2019.

Kenneth Coleman
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES _____
Notary Public, South Carolina
My Commission Expires
July 15, 2024

P. Wilkes
Deputy Sheriff, Richland County S# 1195

P.O. BOX 143 Columbia, SC 29202
Office: 803-576-3151 Fax: 803-576-1898

Entered: _____
Number: _____

MAR 15 2019

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

COMMON CAUSE, et al., Plaintiffs

2019CP4001194

SUBPOENA IN A CIVIL CASE

v.

DAVID LEWIS, et al., Defendants

Case Number: 18-CP-_____

Pending in Wake County, North Carolina (Wake County Case No. 18-CVS-14001)

TO: Geographic Strategies, LLC, c/o Dalton Oldham, 1119 Susan St., Columbia, SC 29210

YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME March 18, 2019, 10:00 AM
---------------------	--

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects):

See Attachment to Subpoena to Geographic Strategies, LLC.

PLACE Sweeney, Wingate & Barrow, P.A. 1515 Lady St. Columbia, SC 29201	DATE AND TIME March 13, 2019, 12:00 PM
--	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Caroline Mackie 02/26/2019 Caroline P. Mackie, NC Bar No. 41512
 Attorney/Issuing Officer's Signature Date Print Name
 Indicate if Attorney for Plaintiff or Defendant
 Attorney's Address and Telephone Number :
 Edwin M. Speas, Jr. (NC Bar No. 4112) and Caroline P. Mackie, Attorneys for Common Cause, North Carolina Democratic Party, and the Individual Plaintiffs
 Poyner Spruill LLP, P.O. Box 1801, Raleigh, NC 27602-1801. (919) 783-6400. Fax: (919) 783-1075

Jeanette W. McBride 2/27/19 Jeanette W. McBride
 Clerk of Court/Issuing Officer's Signature Date Print Name
 Pro Se Litigant's Name, Address and Telephone Number :

MAR 13 2019 01589

RECEIVED
2019 MAR 13 PM 3:28
CSD

2015 2 1 9am

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

MAR 13 2019
01589

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

03/14/19 - 4:53 PM Left CARD

D^o not
old woman
mother

ATTACHMENT TO SUBPOENA TO GEOGRAPHIC STRATEGIES, LLC

INSTRUCTIONS

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

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

DEFINITIONS

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

1. "2011 Plans" mean the 2011 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in November 2011, including all drafts thereof.
2. "2017 Plans" mean the 2017 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in August 2017, including all drafts thereof.
3. "2011 Unchanged Districts" means the state legislative districts enacted by the General Assembly under the 2011 Plans that were not altered under the 2017 Plans, including all drafts thereof.
4. The "2017 Plans Criteria" refer to the criteria that the North Carolina House and Senate Redistricting Committees adopted for the 2017 Plans.
5. "Individual Defendants" refers to Senator Ralph E. Hise, Jr.; Representative David R. Lewis; President Pro Tempore Philip E. Berger; Speaker Timothy K. Moore; Chairman Andy Penry, Chairman of the North Carolina State Board of Elections and Ethics Enforcement; Joshua Malcolm, Vice-Chair of the North Carolina State Board of Elections & Ethics Enforcement; Ken Raymond, Secretary of the North Carolina State Board of Elections & Ethics Enforcement; Stella Anderson, Member of the North Carolina State Board of Elections & Ethics Enforcement; Damon Circosta, Member of the North Carolina State Board of Elections & Ethics Enforcement; Stacy "Four" Eggers IV, Member of the North Carolina State Board of Elections & Ethics Enforcement; Jay Hemphill, Member of the North Carolina State Board of Elections & Ethics Enforcement; Valerie Johnson, Member of the North Carolina State Board of Elections & Ethics Enforcement; John Lewis, Member of the North Carolina State Board of Elections & Ethics Enforcement; and their predecessors in office.
6. "Entity Defendants" refers to The State of North Carolina and the North Carolina State Board of Elections and Ethics Enforcement.
7. "Defendants" refers to the Individual Defendants and the Entity Defendants.
8. With respect to the Individual Defendants, "You" and "Your" refers to the Individual Defendants and their predecessors in office, attorneys, representatives, agents, and others acting on their behalf.
9. With respect to the Entity Defendants, "You" and "Your" refers to the Entity Respondents and all branches of government, including departments, agencies, committees, and subcommittees, as well as attorneys, representatives, members, employees, agents, and others acting on behalf of the Entity Defendants.

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

LIST OF DOCUMENTS AND THINGS TO BE PRODUCED
FOR PLAINTIFFS TO INSPECT AND COPY PURSUANT TO THIS SUBPOENA

1. All documents and communications referring or relating to the 2017 Plans, including, but not limited to:
 - (a) All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2017 Plans.
 - (b) All documents referring or relating to the 2017 Plans Criteria.
 - (c) All documents referring or relating to how each 2017 Plans Criterion was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
 - (d) All documents referring or relating to how each 2017 Plans Criterion affected the 2017 Plans, including any rule or principle guiding the use of each criterion in developing the 2017 Plans, or any specific choices made in constructing a district based on each criterion.
 - (e) All documents referring or relating to the prioritization or weighting of the 2017 Plans criteria in developing the 2017 Plans.
 - (f) All communications since January 1, 2015 with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2017 Plans.
 - (g) All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2017 Plans.
 - (h) All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2017 Plans.

2. All documents and communications since November 1, 2010 referring or relating to the 2011 Unchanged Districts, including, but not limited to:
 - (a) All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2011 Unchanged Districts.

- (b) All documents referring or relating to the criteria considered or using in creating the 2011 Unchanged Districts.
 - (c) All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
 - (d) All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts affected the 2011 Unchanged Districts, including any rule or principle guiding the use of each criterion in developing the 2011 Unchanged Districts, or any specific choices made in constructing a district based on each criterion.
 - (e) All documents referring or relating to the prioritization or weighting of each of the criteria considered or used in creating the 2011 Unchanged Districts.
 - (f) All communications with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2011 Unchanged Districts.
 - (g) All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2011 Unchanged Districts.
 - (h) All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2011 Unchanged Districts.
3. All documents and communications since January 1, 2015 not encompassed within Requests 1 or 2 that refer or relate to the development of new state legislative districts for the North Carolina House of Representatives and the North Carolina Senate.
 4. All non-privileged documents and communications since January 1, 2015 not encompassed within Requests 1, 2, or 3 that refer or relate to the litigation surrounding, or the legal status of, the 2011 Plans.
 5. Any computers used to draw the 2011 Plans and/or the 2017 Plans, including computers previously owned by Dr. Thomas Hofeller.

CERTIFICATE OF SERVICE

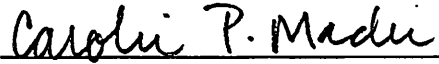
I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

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

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

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

This the 28th day of February, 2019.



Caroline P. Mackie

EXHIBIT D



Richland County Sheriff's Department

LEON L. LOTT, JR.
Sheriff

Poyner Spruill
PO Box 1801
Raleigh, NC 27690

March 19, 2019

Re: Dalton Oldham

Dear Sir/Madam:

On 3/13/2019, this department received a civil paper from your office. Please find the enclosed Affidavit of Service/Non Service for the above reference case.

I am pleased to be of service and if my Department can assist you in the future, please call upon my Civil Process Division at (803) 576-3151.

Sincerely,

A handwritten signature in black ink, appearing to read "Leon Lott".

Leon Lott
Richland County Sheriff

MAR 25 2019

}

RICHLAND COUNTY SHERIFF'S DEPARTMENT



LEON L. LOTT, JR.
Sheriff

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PLAINTIFF(S)

Common Cause

vs.

DEFENDANT(S)

DAVID LEWIS
TO: DALTON OLDHAM
1119 SUSAN ST. COLA, S.C.

AFFIDAVIT OF SERVICE

OR

NON-SERVICE
(DATE: 03/18/19 9:00 AM)

PERSONALLY APPEARED Before me P. Wilkes, duly sworn, says that he/she served, or attempted to serve, the following civil paper(s):

- Affidavit
- Complaint
- Cover Sheet
- Decree
- Notice
- Order
- Petition
- Plaintiff's Bond

- Restraining Order
- Rule to Show Cause
- Subpoena
- Subpoena Duces Tecum
- Summons
- Verification
- Other

on the defendant, DALTON OLDHAM, as follows:

() by personally handing the process to the defendant at _____, _____, S.C.
(Street) (City)
on _____
(Date/Time)

() by handing the process to _____, at _____,
(Name of Person Served/Relationship) (Street) (City)
S.C. on _____, a person of suitable age and discretion then residing in the
defendant's usual place of abode.

() by handing the process to _____, the registered corporate agent or officer of the
company at _____ and leaving him/her a copy of same on _____.
(Address) (Date/Time)

WAS UNABLE to locate and serve the above process on the defendant, after diligent efforts by checking the City/Telephone Directory, and going to the address given for the defendant, and by questioning persons in the vicinity of the address. THE PROCESS IS RETURNED UNEXECUTED.

COMMENTS: Unable to serve prior to court date.

Deponent knows the person served to be the defendant and Deponent is not a party to the action.

SWORN TO Before me this 18 day of March, 2019.

Kenneth Coleman

P. WILKES
Deputy Sheriff, Richland County

S# 1195

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES CAROL KENNETH COLEMAN
Notary Public, South Carolina
My Commission Expires
July 15, 2024

P.O. BOX 143 Columbia, SC 29202
Office: 803-576-3151 Fax: 803-576-1898

Entered: _____
Number: _____

MAR 15 2019

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

COMMON CAUSE, et al., Plaintiffs

2019CP4001194

v.

SUBPOENA IN A CIVIL CASE

DAVID LEWIS, et al., Defendants

Case Number: 18-CP-_____

Pending in Wake County, North Carolina
(Wake County Case No. 18-CVS-14001)

TO: Dalton Oldham, 1119 Susan St., Columbia, SC 29210

YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME March 18, 2019, 10:00 AM
---------------------	--

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See Attachment to Subpoena to Dalton Oldham.

PLACE Sweeney, Wingate & Barrow, P.A. 1515 Lady St. Columbia, SC 29201	DATE AND TIME March 13, 2019, 12:00 PM
--	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

<i>Caroline Mackie</i> Attorney/Issuing Officer's Signature	02/26/2019 Date	Caroline P. Mackie, NC Bar No. 41512 Print Name
Indicate if Attorney for Plaintiff or Defendant		
Attorney's Address and Telephone Number :		
Edwin M. Speas, Jr. (NC Bar No. 4112) and Caroline P. Mackie, Attorneys for Common Cause, North Carolina Democratic Party, and the Individual Plaintiffs		
Poyner Spruill LLP, P.O. Box 1801, Raleigh, NC 27602-1801. (919) 783-6400. Fax: (919) 783-1075		

<i>Jeannette W. McBride</i> Clerk of Court/Issuing Officer's Signature	2/27/19 Date	Jeannette W. McBride Print Name
Pro Se Litigant's Name, Address and Telephone Number :		

MAR 13 2019
01590

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

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(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

ATTACHMENT TO SUBPOENA TO DALTON OLDHAM

INSTRUCTIONS

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

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

DEFINITIONS

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

1. "2011 Plans" mean the 2011 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in November 2011, including all drafts thereof.
2. "2017 Plans" mean the 2017 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in August 2017, including all drafts thereof.
3. "2011 Unchanged Districts" means the state legislative districts enacted by the General Assembly under the 2011 Plans that were not altered under the 2017 Plans, including all drafts thereof.
4. The "2017 Plans Criteria" refer to the criteria that the North Carolina House and Senate Redistricting Committees adopted for the 2017 Plans.
5. "Individual Defendants" refers to Senator Ralph E. Hise, Jr.; Representative David R. Lewis; President Pro Tempore Philip E. Berger; Speaker Timothy K. Moore; Chairman Andy Penry, Chairman of the North Carolina State Board of Elections and Ethics Enforcement; Joshua Malcolm, Vice-Chair of the North Carolina State Board of Elections & Ethics Enforcement; Ken Raymond, Secretary of the North Carolina State Board of Elections & Ethics Enforcement; Stella Anderson, Member of the North Carolina State Board of Elections & Ethics Enforcement; Damon Circosta, Member of the North Carolina State Board of Elections & Ethics Enforcement; Stacy "Four" Eggers IV, Member of the North Carolina State Board of Elections & Ethics Enforcement; Jay Hemphill, Member of the North Carolina State Board of Elections & Ethics Enforcement; Valerie Johnson, Member of the North Carolina State Board of Elections & Ethics Enforcement; John Lewis, Member of the North Carolina State Board of Elections & Ethics Enforcement; and their predecessors in office.
6. "Entity Defendants" refers to The State of North Carolina and the North Carolina State Board of Elections and Ethics Enforcement.
7. "Defendants" refers to the Individual Defendants and the Entity Defendants.
8. With respect to the Individual Defendants, "You" and "Your" refers to the Individual Defendants and their predecessors in office, attorneys, representatives, agents, and others acting on their behalf.
9. With respect to the Entity Defendants, "You" and "Your" refers to the Entity Respondents and all branches of government, including departments, agencies, committees, and subcommittees, as well as attorneys, representatives, members, employees, agents, and others acting on behalf of the Entity Defendants.

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

LIST OF DOCUMENTS AND THINGS TO BE PRODUCED
FOR PLAINTIFFS TO INSPECT AND COPY PURSUANT TO THIS SUBPOENA

1. All documents and communications referring or relating to the 2017 Plans, including, but not limited to:
 - (a) All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (e.g., paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2017 Plans.
 - (b) All documents referring or relating to the 2017 Plans Criteria.
 - (c) All documents referring or relating to how each 2017 Plans Criterion was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
 - (d) All documents referring or relating to how each 2017 Plans Criterion affected the 2017 Plans, including any rule or principle guiding the use of each criterion in developing the 2017 Plans, or any specific choices made in constructing a district based on each criterion.
 - (e) All documents referring or relating to the prioritization or weighting of the 2017 Plans criteria in developing the 2017 Plans.
 - (f) All communications since January 1, 2015 with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2017 Plans.
 - (g) All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2017 Plans.
 - (h) All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2017 Plans.

2. All documents and communications since November 1, 2010 referring or relating to the 2011 Unchanged Districts, including, but not limited to:
 - (a) All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (e.g., paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2011 Unchanged Districts.

- (b) All documents referring or relating to the criteria considered or using in creating the 2011 Unchanged Districts.
 - (c) All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
 - (d) All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts affected the 2011 Unchanged Districts, including any rule or principle guiding the use of each criterion in developing the 2011 Unchanged Districts, or any specific choices made in constructing a district based on each criterion.
 - (e) All documents referring or relating to the prioritization or weighting of each of the criteria considered or used in creating the 2011 Unchanged Districts.
 - (f) All communications with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2011 Unchanged Districts.
 - (g) All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2011 Unchanged Districts.
 - (h) All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2011 Unchanged Districts.
3. All documents and communications since January 1, 2015 not encompassed within Requests 1 or 2 that refer or relate to the development of new state legislative districts for the North Carolina House of Representatives and the North Carolina Senate.
 4. All non-privileged documents and communications since January 1, 2015 not encompassed within Requests 1, 2, or 3 that refer or relate to the litigation surrounding, or the legal status of, the 2011 Plans.
 5. Any computers used to draw the 2011 Plans and/or the 2017 Plans, including computers previously owned by Dr. Thomas Hofeller.

CERTIFICATE OF SERVICE

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

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

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

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

This the 28th day of February, 2019.



Caroline P. Mackie

EXHIBIT E



LEON L. LOTT, JR.
Sheriff

Richland County Sheriff's Department

Poyner Spruill
PO Box 1801
Raleigh, NC 27690

March 19, 2019

Re: Dalton Oldham

Dear Sir/Madam:

On 3/13/2019, this department received a civil paper from your office. Please find the enclosed Affidavit of Service/Non Service for the above reference case.

I am pleased to be of service and if my Department can assist you in the future, please call upon my Civil Process Division at (803) 576-3151.

Sincerely,

A handwritten signature in black ink, appearing to read "Leon Lott".

Leon Lott
Richland County Sheriff

MAR 25 2019

RICHLAND COUNTY SHERIFF'S DEPARTMENT



LEON L. LOTT, JR.
Sheriff

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

AFFIDAVIT OF SERVICE

PLAINTIFF(S)

Common Cause

vs.

DEFENDANT(S)

David Lewis

*To: Dalton Oldham
1119 Susan St. ColA, SC*

OR

~~NON-SERVICE~~

(DATE: *03/18/19*)

(9:00 AM)

PERSONALLY APPEARED Before me *P. Wilkes* duly sworn, says that he/she served, or attempted to serve, the following civil paper(s):

- Affidavit
- Complaint
- Cover Sheet
- Decree
- Notice
- Order
- Petition
- Plaintiff's Bond

- Restraining Order
- Rule to Show Cause
- Subpoena
- Subpoena Duces Tecum
- Summons
- Verification
- Other

on the defendant, *DALTON Oldham*, as follows:

() by personally handing the process to the defendant at _____, _____, S.C.
(Street) (City)
on _____
(Date/Time)

() by handing the process to _____, at _____,
(Name of Person Served/Relationship) (Street) (City)
S.C. on _____, a person of suitable age and discretion then residing in the
defendant's usual place of abode.

() by handing the process to _____, the registered corporate agent or officer of the
company at _____ and leaving him/her a copy of same on _____.
(Address) (Date/Time)

WAS UNABLE to locate and serve the above process on the defendant, after diligent efforts by check-
ing the City/Telephone Directory, and going to the address given for the defendant, and by question-
ing persons in the vicinity of the address. THE PROCESS IS RETURNED UNEXECUTED.

COMMENTS: *Unable to serve prior
to court date.*

Deponent knows the person served to be the defendant and Deponent is not a party to the action.

SWORN TO Before me this
16 day of *March* 20*19*.

Kenneth Coleman

P. Wilkes
Deputy Sheriff, Richland County

P. WILKES
S# 1195

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES July 15, 2024
KENNETH COLEMAN
Notary Public, South Carolina
My Commission Expires
July 15, 2024

P.O. BOX 143 Columbia, SC 29202
Office: 803-576-3151 Fax: 803-576-1898

Entered: _____
Number: _____

MAR 15 2019

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

COMMON CAUSE, et al., Plaintiffs

2019CP400 1194
SUBPOENA IN A CIVIL CASE

v.

DAVID LEWIS, et al., Defendants

Case Number: 18-CP-_____

Pending in Wake County, North Carolina
(Wake County Case No. 18-CVS-14001)

TO: Dalton Oldham, 1119 Susan St., Columbia, SC 29210

YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Sweeney, Wingate & Barrow, P.A. 1515 Lady St. Columbia, SC 29201	DATE AND TIME March 18, 2019, 10:00 AM
--	--

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

PLACE	DATE AND TIME , AM
-------	--------------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM
----------	--------------------

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Caroline Mackie 02/26/2019 Caroline P. Mackie, NC Bar No. 41512
 Attorney/Issuing Officer's Signature Date Print Name
 Indicate if Attorney for Plaintiff or Defendant
 Attorney's Address and Telephone Number :
 Edwin M. Speas, Jr. (NC Bar No. 4112) and Caroline P. Mackie, Attorneys for Common Cause, North Carolina Democratic Party, and the Individual Plaintiffs
 Poyner Spruill LLP, P.O. Box 1801, Raleigh, NC 27602-1801. (919) 783-6400. Fax: (919) 783-1075

Jeanette W. McBride 2-27-19 Jeanette W. McBride
 Clerk of Court/Issuing Officer's Signature Date Print Name
 Pro Se Litigant's Name, Address and Telephone Number :

MAR 13 2019 9:58

RECEIVED
2019 MAR 13 PM 3:25
RCS D

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL <input type="checkbox"/> YES <input type="checkbox"/> NO AMOUNT \$
	PLACE	
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

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(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

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(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

RECEIVED
2019 MAR 13 PM 3:25
RCSD

CERTIFICATE OF SERVICE

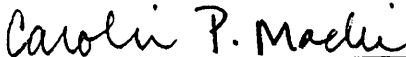
I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

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

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

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

This the 28th day of February, 2019.



Caroline P. Mackie

EXHIBIT F

FOR LAWYERS[Your Membership](#)[Fastcase Legal Research](#)[Managing Your Law Practice](#)**• Directory**[Lawyers Desk Book](#)[ADR Search](#)[Contract Lawyer &
Paralegal Directory](#)[Mailing Lists and Labels](#)[Sections, Committees &
Divisions](#)[Member Benefits & Assistance](#)[Event Calendar](#)[Bar Programs](#)[Legal Resources & Info](#)

Dalton Lamar Oldham Jr.

Address: 1119 Susan St.
Columbia, SC 29210
Richland

Email: dloesq@aol.com

Phone: (202) 863-8740 Ext.

Law School: University of South Carolina School of Law, 1989

Bar Admission: 12/04/1989

EXHIBIT G

774584610586

Unable to deliver shipment, returned to shipper
 Recommended action: No action is required. The package is being returned to the shipper.

Scheduled delivery: Pending

DELIVERY EXCEPTION
WEST COLUMBIA, SC

GET STATUS UPDATES

Adult signature required

Want to know when your package will arrive?
 See your estimated delivery time with FedEx Delivery Manager. Sign up or Log in

FROM
 Caroline Mackie
 301 Fayetteville St.
 Suite 1900
 Raleigh, NC US 27601
 919 783-2927
 Origin Terminal
RALEIGH, NC

TO
 Geographic Strategies, LLC
 c/o Dalton Oldham
 1119 Susan Street
 COLUMBIA, SC US 29210
 919 783-2927

Shipment Facts

TRACKING NUMBER 774584610586	SERVICE FedEx Priority Overnight	DOOR TAG NUMBER DT105149951585
WEIGHT 2 lbs / 0.91 kgs	SIGNATURE SERVICES Adult signature required	DELIVERY ATTEMPTS 2
TOTAL PIECES 1	TOTAL SHIPMENT WEIGHT 2 lbs / 0.91 kgs	TERMS Shipper
SHIPPER REFERENCE 303846-00002000	PACKAGING FedEx Envelope	SPECIAL HANDLING SECTION Deliver Weekday, Residential Delivery, Adult Signature Required
STANDARD TRANSIT 3/01/2019 by 10:30 am	SHIP DATE Thu 2/28/2019	SCHEDULED DELIVERY Pending

Travel History

Local Scan Time

Wednesday, 3/06/2019

12:18 pm WEST COLUMBIA, SC Returning package to shipper
Return tracking number [774633246420](#)

10:26 am WEST COLUMBIA, SC At local FedEx facility

Tuesday, 3/05/2019

10:51 am WEST COLUMBIA, SC At local FedEx facility

Monday, 3/04/2019

6:42 pm WEST COLUMBIA, SC At local FedEx facility

12:00 pm WEST COLUMBIA, SC Delivery exception
Refused by recipient

8:16 am WEST COLUMBIA, SC On FedEx vehicle for delivery

5:37 am WEST COLUMBIA, SC At local FedEx facility

Friday, 3/01/2019

5:29 pm WEST COLUMBIA, SC At local FedEx facility

12:41 pm WEST COLUMBIA, SC Delivery exception
Customer not available or business closed

8:01 am WEST COLUMBIA, SC On FedEx vehicle for delivery

7:15 am WEST COLUMBIA, SC At local FedEx facility

6:24 am WEST COLUMBIA, SC At destination sort facility

4:17 am MEMPHIS, TN Departed FedEx location

Thursday, 2/28/2019

8:40 pm RALEIGH, NC Left FedEx origin facility

5:16 pm RALEIGH, NC Picked up

10:23 am Shipment information sent to FedEx

EXHIBIT H

From: Jones, Stanton
Sent: Wednesday, March 6, 2019 5:00 PM
To: dloesq@aol.com
Cc: Speas, Edwin M.; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel
Subject: Common Cause v. Lewis (N.C.) -- subpoena for documents and testimony
Attachments: LTR - Walton Oldham serving subpoenas.pdf; Subpoena compelling attendance at deposition.pdf; Subpoena compelling production of documents to Dalton Oldham.pdf; Subpoena compelling production of documents to Geographic Strategies, LL....pdf

Mr. Oldham:

I represent plaintiffs in Common Cause v. Lewis, a lawsuit currently pending in North Carolina's Wake County Superior Court. We have attempted to serve you and Geographic Strategies with the attached subpoenas for records and for your appearance at a deposition on 3/18. I am told that you recently refused service of these subpoenas -- please state the legal basis for you to refuse service of court-authorized subpoenas. Please also provide a time within the next 2 days at which you will accept service; otherwise we will need to have the sheriff carry out the service.

Regards,
Stanton Jones

R. Stanton Jones

Arnold & Porter

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

T: +1 202.942.5563 | F: +1 202.942.5999

stanton.jones@arnoldporter.com | www.arnoldporter.com

EXHIBIT I

Jun 19 2019
REFERENCE ID: 348988


SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NOTICE OF CHANGE OF (1) DESIGNATED OFFICE, (2) AGENT FOR SERVICE OF
PROCESS, OR (3) ADDRESS OF AGENT
LIMITED LIABILITY COMPANY – DOMESTIC AND FOREIGN

TYPE OR PRINT CLEARLY IN BLACK INK

FILING FEE \$10.00

Pursuant to the 1976 S.C. Code of Laws, as amended, Section 33-44-109, the limited liability company submits the following statement of change.

1. The name of the limited liability company is:

Geographic Strategies LLC

2. The limited liability company is (check either "a" or "b", whichever is applicable):

a. A South Carolina limited liability company.

b. A foreign limited liability company authorized to transact business in South Carolina.

3. a. The South Carolina street address of the current designated office for the limited liability company is:

1119 Susan Rd

(Street Address)

Columbia SC 29210

(City, State, Zip Code)

b. The name of the company's current agent for service of process is:

Dalton L Oldham

(Name)

c. The South Carolina street address of the current registered agent's office is:

1119 Susan Rd

(Street Address)

Columbia SC 29210

(City, State, Zip Code)

4. Check and complete all boxes (a-c) that apply.

a. The company is changing the address of its designated office.

The new South Carolina address of the designated office of the limited liability company is:

137 Edge Water Ln.

(Street Address)

Lexington SC 29072

(City, State, Zip Code)

Jun 19 2019
REFERENCE ID: 348988

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Name of Limited Liability Company

b. The company is changing its agent for service of process.

The name of the company's new agent for service of process is:

(Name)

I hereby consent to the appointment as registered agent.

(Agent's Signature)

c. The company is changing the street address of the agent for service of process.

The new South Carolina street address of the registered agent's office is:

137 Edgewater LN
(Street Address)

Lexington SC 29072
(City, State, Zip Code)

5. Unless otherwise specified, these articles are effective when endorsed for filing by the Secretary of State. Specify the time and date of any delayed effective date: _____
(Date)

Date: 3/11/19

[Handwritten Signature]
(Signature)

Dalton L Oldham
(Print Name)

Capacity/Position of Person Signing (You must check one box.)

- Manager Member Organizer
- Fiduciary Attorney-in-Fact

EXHIBIT J

From: [Hill, Linda](#)
To: [Majmundar, Amar](#); "[Brennan, Stephanie](#)"; [Strach, Phillip J.](#); [McKnight, Michael D.](#); "[Riggins, Alyssa](#)"; rraile@bakerlaw.com; mbraden@bakerlaw.com; [Stanley, Trevor M.](#)
Cc: [Mackie, Caroline P.](#)
Subject: Common Case, et al. v. Lewis, et al.
Date: Thursday, February 28, 2019 1:48:50 PM
Attachments: [image001.jpg](#)
[LTR - Walton Oldham serving subpoenas.pdf](#)
[Subpoena compelling attendance at deposition.pdf](#)
[Subpoena compelling production of documents to Dalton Oldham.pdf](#)
[Subpoena compelling production of documents to Geographic Strategies, LLC.pdf](#)

This email is being sent at the request of Caroline Mackie.

Linda C. Hill | Legal Secretary



301 Fayetteville Street, Suite 1900, Raleigh, NC 27601

PO Box 1801, Raleigh NC 27602-1801

D: 919 783 2927

lhill@poynerspruill.com | www.poynerspruill.com

EXHIBIT K

From: Jones, Stanton
Sent: Friday, March 15, 2019 1:37 PM
To: Strach, Phillip J.; Stanley, Trevor M.
Cc: Speas, Edwin M.; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel
Subject: Common Cause v. Lewis -- Oldham subpoena

Phil and Trevor – We have made multiple attempts to serve Dale Oldham with our subpoena, to no avail. We understand the sheriff's office is attempting service again today. The subpoena commands appearance at deposition on Monday, March 18, but that obviously will not go forward. We'll let you know when the subpoena has been served, and we can find a mutually agreeable date for the deposition.

I'll also email Mr. Oldham about this, but I don't know if I have his operative email address, so please let him know.

Thanks.

Stanton

EXHIBIT L

STATE OF NORTH CAROLINA	IN THE GENERAL COURT OF JUSTICE
	SUPERIOR COURT DIVISION
COUNTY OF WAKE	11 CVS 16896
	11 CVS 16940

MARGARET DICKSON, et al.,)
)
Plaintiffs,)
vs.)
ROBERT RUCHO, in his)
official capacity only as)
the Chairman of the North)
Carolina Senate)
Redistricting Committee,)
et al.,)
)
Defendants.)
<hr style="width: 50%; margin-left: 0;"/>	
NORTH CAROLINA STATE)
CONFERENCE OF BRANCHES OF)
THE NAACP, et al.,)
)
Plaintiffs,)
vs.)
STATE OF NORTH CAROLINA,)
et al.,)
)
Defendants.)

DEPOSITION OF DALE OLDHAM, ESQ.

9:36 A.M.

WEDNESDAY, JUNE 27, 2012

POYNER SPRUILL
301 FAYETTEVILLE STREET
SUITE 1900
RALEIGH, NC 27601

By: Denise Myers Byrd, CSR 8340, RPR

1 DALE OLDHAM, ESQ.,
2 having been first affirmed by the Certified Shorthand
3 Reporter and Notary Public to tell the truth, the whole
4 truth and nothing but the truth, testified as follows:

5 EXAMINATION

6 BY MR. SPEAS:

7 Q. Would you state your name for the record, please.

8 A. Dalton Lamar Oldham, also known as Dale.

9 MR. FARR: Eddie, may I say something for
10 the record?

11 MR. SPEAS: Please.

12 MR. FARR: We have agreed to make
13 Mr. Oldham available because he was involved in
14 drawing certain aspects of legislative maps that
15 are part of the enacted plans and that's why we
16 agreed to have him testify.

17 We're not going to allow him to testify
18 about legal advice he gave to Senator Rucho or
19 Representative Lewis, work product that Mr. Oldham
20 prepared.

21 And also, Senator Rucho and Representative
22 Lewis have waived their legislative privilege, so
23 to the extent he had discussions with them that
24 were not attorney privilege, they've waived their
25 legislative privilege.

EXHIBIT M

STATE OF NORTH CAROLINA
COUNTY OF WAKE

GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, ET AL.,)
)
 Plaintiffs,)
)
 vs.)
)
DAVID LEWIS, IN HIS OFFICIAL)
CAPACITY AS SENIOR CHAIRMAN)
OF THE HOUSE SELECT COMMITTEE)
ON REDISTRICTING, ET AL.,)
)
 Defendants.)

VIDEOTAPED DEPOSITION OF
STEPHANIE HOFELLER

9:38 A.M.

FRIDAY, MAY 17, 2019

POYNER SPRUILL
301 FAYETTEVILLE STREET, SUITE 1900
RALEIGH, NORTH CAROLINA

BY: LISA A. WHEELER, RPR, CRR

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?

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.

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

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

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

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.

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?

EXHIBIT N

HIGGINS]·[BENJAMIN

◆ ATTORNEYS AT LAW ◆

301 N. Elm Street, Suite 800, Greensboro, N.C. 27401-2260
P.O. Box 20570, Greensboro, N.C. 27420-0570
Phone: 336-273-1600 ◆ Fax: 336-274-4650
www.greensborolaw.com

Robert N. Hunter, Jr.
Direct: 336.808.8016
rhunterjr@greensborolaw.com

June 13, 2019

Via Email and U.S. Mail

Edwin M. Speas, Jr., Esq. (espeas@poynerspruill.com)
Caroline P. Mackie, Esq. (cmackie@poynerspruill.com)
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Abba Khanna, Esq. (AKhanna@perkinscoie.com)
Perkins Coie LLP
700 13th Street, N.W.
Washington, D.C. 20005-39601

In Re. The Property of Geographic Strategies, LLC.

Dear Counsel,

I have recently been retained to represent Geographic Strategies LLC, a South Carolina entity, to recover its property consisting of electronic records and files previously possessed by the late Dr. Thomas Hofeller.

As you may know, Dr. Hofeller was a member of the LLC during his lifetime. His full interest in the LLC transferred to the surviving members of the LLC. Based upon my investigation, public press statements, and various court filings, it appears to me that you and

Higgins Benjamin, PLLC
Comprehensive Legal Solutions

your clients, or those in privity with you, are in possession of my client's property and property of its clients which is confidential and privileged in nature. It appears to my client that this property may have been obtained improperly and may even have been tortiously converted by those who obtained it and by those who, after notice, continue to retain and distribute it. Much of this property is subject to confidentiality clauses between my client and its clients and contains privileged materials of Geographic Strategies clients. Sharing such information with others may tortiously interfere with my client's contracts and prospective business advantage. Please consider this letter a demand for its immediate return.

I am further informed there is a current discovery dispute in Wake County Superior Court in the matter of *Common Cause vs. Lewis*, 18-CVS-14001 (N.C. Super.), in which your clients are asserting the ability to use this information without limitations of a Consent Protective Order which has been entered in this case. Be advised my client, and its clients consider this property to be Highly Confidential and Privileged.

We are requesting that you take the following actions immediately to protect my client's interests and to satisfy your and your clients' legal duties to return property improperly obtained by it and to comply with relevant Rules of Professional Responsibility.

1. Immediately cease reviewing Geographic Strategies' files.
2. Deem the Geographic Strategies files to be designated Highly Confidential and Privileged under the Consent Protective Order.
3. Produce a complete copy of the files to Geographic Strategies LLC, or return them in their entirety to Geographic Strategies, the rightful owner of the property.
4. Identify by name the persons or entities outside your Firm with whom those outside your firm these files have been shared with including the scope of the information shared, so that the files may be recovered from them and/or they may be brought within the Consent Protective Order. Identify by name anyone within your firm who has reviewed the materials.

Sincerely yours,



Robert N. Hunter, Jr.

EXHIBIT O

Jun 19 2019
REFERENCE ID: 348988

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

**STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
Limited Liability Company – Domestic
Filing Fee - \$110.00**

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws §33-44-202 and §33-44-203.

1. The name of the limited liability company (**Company ending must be included in name***)

Geographic Strategies, LLC

***NOTE: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C." or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."**

2. The address of the initial designated office of the limited liability company in South Carolina is

1119 Susan St.

Street Address

Columbia, SC

29210

City

Zip Code

3. The initial agent for service of process is

Dalton L Oldham

Name

Dalton L Oldham
Signature of Agent

and the street address in South Carolina for this initial agent for service of process is

1119 Susan St.

Street Address

Columbia, SC

29210

City

Zip Code

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

- (a) Dalton L Oldham

Name

1119 Susan

Street Address

Columbia

SC

29210

City

State

Zip Code

- (b)

Name

Street Address

City

110616-0286

FILED: 06/16/2011

GEOGRAPHIC STRATEGIES, LLC

Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

Jun 19 2019
REFERENCE ID: 348988

Name of Limited Liability Company

~~Debra E. Oldham~~

Geographic Strategies, LLC

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

5. Check this box only if the company is to be a term company. If the company is a term company, provide the term specified. _____
6. Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.
- (a) _____
Name

Street Address

City State Zip Code
- (b) _____
Name

Street Address

City State Zip Code
7. Check this box only if one or more of the members of the company are to be liable for its debts and obligations under §33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

9. Any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.

10. Each organizer listed under number 4 must sign.

Debra E. Oldham
Signature of Organizer

6/15/11
Date

Signature of Organizer

Date

EXHIBIT P

From: Jones, Stanton
Sent: Tuesday, April 9, 2019 5:03 PM
To: Strach, Phillip J.; John Branch
Cc: Cox, Paul; Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; Denton Worrell; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P.; Theodore, Elisabeth; Jacobson, Daniel
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance
Attachments: Index -- HIGHLY CONFIDENTIAL - ATTORNEYS EYES ONLY.zip

Phil:
Because Legislative Defendants and Intervenor Defendants have refused our proposed filtering approach, and because we are now awaiting the Court's resolution of this issue, we have not actually conducted the filtering. As such, we do not know the volume of data that will remain after filtering.

While we have not received an index for all the materials that were produced in response to the subpoena, we have received a partial index of file names and file paths for some of those materials. I've attached that partial index.

Please note that, because some of the file names and file paths in this partial index indicate personal sensitive information of Dr. Hofeller and his family, we have marked the index at HIGHLY CONFIDENTIAL / OUTSIDE ATTORNEYS' EYES ONLY pursuant to Paragraph 3 of the Consent Protective Order.

Regards,
Stanton

From: Strach, Phillip J. [mailto:phil.strach@ogletree.com]
Sent: Thursday, April 04, 2019 11:39 AM
To: Theodore, Elisabeth; John Branch
Cc: Jacobson, Daniel; Jones, Stanton; Cox, Paul; Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; Denton Worrell; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth:

As I've previously noted we oppose any filtering but we won't know when we can respond to your motion until we've seen it. In the meantime, please let us know how much data is in the non-filtered materials and also send us an index of the files.

Thanks.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Thursday, April 04, 2019 10:13 AM

To: John Branch <JBranch@shanahanlawgroup.com>

Cc: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Cox, Paul <pcox@ncdoj.gov>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>

Subject: Re: Common Cause v. Lewis -- notice of subpoena compliance

John, apologies for the multiple emails. One amendment to my prior email -- Stroz has informed us that if the court does permit the filtering, then they could likely arrange it so that your vendor is present to observe the filtering process if that's what you want for comfort as to the process. As I mentioned, we will get the motion on file.

Best,
Elisabeth

On Apr 4, 2019, at 9:29 AM, Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com> wrote:

John, thanks for your response. We understand your position on the filtering, but as mentioned, this is something that we are going to bring to the court for resolution. It is apparent that much of this process will depend on the court's answer to whether we can filter, and therefore we believe it is most efficient to receive an answer from the court on that and then work out the mechanics of the copying process after. To clarify, though, if the court permits us to do the filtering, that would mean that our vendor would perform the filtering in its lab on its own, create a new image of just the non-filtered items, and then provide your vendor access to that new image.

Pursuant to the court's case management order, could you tell us by 2 pm today if you will respond to the motion regarding the filtering, how many days you would like to respond, and your availability for a hearing next week if the court decides to hold a hearing?

Best,
Elisabeth

On Apr 3, 2019, at 5:24 PM, John Branch <JBranch@shanahanlawgroup.com> wrote:

Dan,

Thanks for the information on the lack of objections and the date of receipt.

The rule provides that we get access to what you all received, without filtering. I am not saying that there is no possible limitation at all on the use of the information, especially since I have not seen the content of the drives. However, to the extent that Plaintiffs received the drives we get to inspect and copy the entirety of what Plaintiffs have.

Also, let me know what potential costs you all are concerned about on your end. I'm not sure I understand where they will come from given that Plaintiffs would simply be making the drives available to our vendor to copy at Plaintiffs' vendor's location, but I could be missing something.

Best regards,

John

John E. Branch III | Partner

<image001.png>

128 E. Hargett Street | Third Floor
Raleigh, NC 27601

Phone: (919) 856-9494

Email: jbranch@shanahanlawgroup.com

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

Sent: Wednesday, April 3, 2019 12:33 PM

To: John Branch <JBranch@shanahanlawgroup.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D.

<Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark

<MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar

<amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

John,

Thanks for your response. With respect to the issue of copying, if we are understanding your email, you are asking for your vendor to go the office of our vendor (Stroz Friedberg) in Washington, DC, and make a copy of all of the hard drives and thumb drives on site yourself, without taking the originals of the drives. Is that correct? If so, we are amenable to that approach (subject to resolution of the separate issue of the medical and other personal files, discussed below), but that is different from what we interpreted Phil as proposing yesterday. If we went this route, we would pass on any costs that we and Stroz incur in facilitating this process. John and Phil, could you each let us know if this approach is acceptable to you? And Paul, if the Intervenor Defendants and Legislative Defendants are making their own copies on site at Stroz in DC, please let us know how the State Defendants would like to proceed.

John, your email does not address the issue of filtering out medical and sensitive personal information, without any party reviewing it or any further dissemination. Could you please let us know Intervenor-Defendants position on this issue? As for your other questions, we explained several emails down on this chain (on which you were copied) that we received the materials from Ms. Lizon on March 13. Per the attached, the subpoena to Ms. Lizon was issued on February 13, several weeks before the intervenors became parties to the case. Neither Ms. Lizon nor any party asserted any objections to the subpoena.

Bet,
Dan

Daniel Jacobson
Senior Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5602
Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: John Branch <JBranch@shanahanlawgroup.com>
Sent: Wednesday, April 3, 2019 11:37 AM
To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell

<DWorrell@shanahanmcdougal.com>; Nate Pencook
<NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>;
Mackie, Caroline P. <CMackie@poynerspruill.com>;
z.zz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>;
melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>;
Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth
<Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton,

I don't think you are correct in your reading of Rule 45(d1). Under the rule, Defendants have an opportunity to both inspect and copy the hard drives and thumb drives you received. Rule 45(d1) states:

(d1) Opportunity for **Inspection** of Subpoenaed Material. - A party or attorney responsible for the issuance and service of a subpoena shall, within five business days after the receipt of material produced in compliance with the subpoena, serve all other parties with notice of receipt of the material produced in compliance with the subpoena and, upon request, shall provide all other parties a reasonable opportunity to **copy and inspect** such material at the expense of the inspecting party.

(emphasis added). Thus, under Rule 45(d1), Defendants have an opportunity to both inspect and make copies of the materials you have received. Plaintiffs must provide such an opportunity to Defendants. Inspection of the drives Plaintiffs received pursuant to the subpoena is expressly provided for under Rule 45(d1), and Defendants are well within their rights to both ask to inspect the drives and make their own copies of them. This is only logical – it would be inherently unfair for any party to receive items and information pursuant to a subpoena but then not make them available to all parties in the litigation.

Intervenor-Defendants are hereby exercising their right for a reasonable opportunity to inspect and copy the four hard drives and eighteen thumb drives produced by Ms. Lizon. We request either that you provide the original hardware that you received to our vendor for copying or that you allow our vendor to copy the hardware on site.

In addition, while it is possible I was not copied on earlier emails due to our later entry in the case, it is unclear to me when Ms. Lizon provided the drives to Plaintiffs, how they were sent to you all, and whether she asserted any objections or other rights in responding to the subpoena or searching for responsive documents. Accordingly, please provide us with any correspondence exchanged between Plaintiffs' counsel and Ms. Lizon regarding the subpoena and identify the date or dates on which Plaintiffs received the four hard drives and eighteen thumbdrives produced in response to the subpoena.

Best regards,

John Branch

John E. Branch III | Partner

<image001.png>

128 E. Hargett Street | Suite 300
Raleigh, NC 27601

Phone: (919) 856-9494

Email: jbranch@shanahanlawgroup.com

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From: Jones, Stanton [<mailto:Stanton.Jones@arnoldporter.com>]
Sent: Wednesday, April 03, 2019 8:59 AM
To: Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <SBrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, if I'm understanding your email correctly, you are asking us to give you the originals of the media (i.e., the original hard drives and thumb drives we received from Ms. Lizon). Please let us know if that's not what you are requesting, but if it is, that is not something we are under any obligation to do. If you have authority to the contrary, please let us know. We believe our obligation is to provide you with copies of the materials we received in response to the subpoena, and the most straightforward way to do that is for our vendor to make forensically sound copies and send them to you or

your vendor. Indeed, we note that this is exactly the procedure you are following with respect to our request to copy and inspect the General Assembly computer purportedly used to create the 2017 plans.

With respect to filtering out sensitive personal information, we intend to go to the court on that. We will file a motion with the court requesting permission to follow the approach we have proposed, but if the court does not authorize such and instead orders us to provide you complete copies of everything on the media, including the sensitive and irrelevant personal information, we will of course comply with the court order.

We would like to make our motion swiftly to facilitate the provision of this material to you and to the State Defendants as quickly as possible; we would have made the motion last week, when we first proposed the filtering process, if we had received your response at that time. We asked you yesterday to advise us of when you would like to file a response to our motion, and when you are available for a telephonic hearing, but have not heard back on those questions. Please let me know by 2pm today when you would like to file a response, and when you are available for a hearing. We can be available Monday or Tuesday of next week.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Tuesday, April 02, 2019 5:30 PM
To: Jones, Stanton; Cox, Paul
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel; Gersch, David P.; Theodore, Elisabeth
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton,

The Rules require plaintiffs to allow us a “reasonable opportunity to copy and inspect such material at the expense of the inspecting party.” We will of course bear the expense of any copy we make for our own use. We can provide you the name and address of our vendor to which the files can be sent to make our copy. In the alternative, we can have the vendor go to your site to retrieve the materials. We do not have any other cost-sharing obligations beyond that based on the plain text of the rule. The Rule also does not provide for a party filtering the data it received from a subpoena prior to making it available for inspection and copying. There is no basis for your refusal to allow us to inspect and copy all of the material as the Rule allows. Please confirm that you will allow us to make this inspection and copying and we will immediately provide you with instructions for shipping the materials to our vendor for copying (or alternatively make arrangements to retrieve the materials).

Thanks.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax:

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Tuesday, April 02, 2019 9:52 AM
To: Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, your email below raises two issues.

First, on the issue of cost, Rule 45(d1) of the North Carolina Rules of Civil Procedure expressly states that our obligation is to copy and provide the materials we received in response to our subpoena "at the expense of the inspecting party." To my knowledge, we have no obligation to copy and provide these materials unless and until you (and others who have requested copies) agree to bear the expense. If you have a different understanding, please provide authority for it. Alternatively, let us know if legislative defendants agree to bear the expense per Elisabeth's email below. Note that state defendants have already agreed to split the quoted expense with legislative defendants.

Second, on the issue of medical and other apparently sensitive personal information, we fail to see how it is in anyone's interest to copy and disseminate such information, which obviously has no bearing on this case but raises serious privacy concerns. We would be happy to send you a list of the keywords we would use to search file and folder names for materials we would segregate out and not review or disseminate.

Please let us know by 6:30pm ET today whether legislative defendants will revisit their position on both issues and agree to our approach. If you do not consent to this approach, we will file a motion seeking clarification as to the cost issue and the court's approval to follow our approach on the second issue. Pursuant to the March 13 Case Management Order, please let us know by 6:30pm ET today when you would like to file a response to our motion and also your availability for a hearing on the motion early next week.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Monday, April 01, 2019 9:05 PM
To: Cox, Paul; Theodore, Elisabeth; Jones, Stanton
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard;

Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch;
dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.;
zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel;
Gersch, David P.

Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth: we do not agree with the proposed process or the splitting of the costs. We believe plaintiffs should comply with the North Carolina Rules of Civil Procedure and produce to us all of the subpoenaed files, without filtering. We are capable of protecting the confidentiality of the materials. Cost-shifting can occur after the final judgment in the case. Please produce these files immediately. Thanks. Phil

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

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax:
919-783-9412

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

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

Sent: Monday, April 01, 2019 12:10 PM

To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton
<Stanton.Jones@arnoldporter.com>; Strach, Phillip J.
<Phil.Strach@ogletreedeakins.com>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D.

<Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark

<MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar

<amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>;

Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch

<JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook

<NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>;

Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com;

melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>;

Gersch, David P. <David.Gersch@arnoldporter.com>

Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth,

Thank you for this additional info and clarification.

The State Defendants would be willing to split with the Legislative Defendants the quoted cost for a copy of the materials.

Paul

<image002.jpg>

Paul M. Cox

Special Deputy Attorney General

Phone: (919)716-6932

pcox@ncdoj.gov

114 W. Edenton St., Raleigh, NC 27603

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

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Thursday, March 28, 2019 3:45 PM
To: Cox, Paul <pcox@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Hi Paul,

We've now received the cost estimate from our vendor, which is \$3500 to \$4000 total for creating two copies (one for the State Defendants and one for the Legislative Defendants). That does not include the cost of processing the data or performing the keyword searching to filter out sensitive documents as described in the prior email; it is just the cost of creating physical images of each of the 22 external drives after the filtering is complete. The cost of the copying is driven largely by the size of the materials and the cost of creating images of physical drives. The size of the materials makes it infeasible to send via FTP. Let us know if you would like to discuss this further.

Legislative Defendants – please let us know whether you agree to the process we have proposed and to splitting the cost, or if you would like to discuss.

Best,
Elisabeth

From: Cox, Paul [<mailto:pcox@ncdoj.gov>]
Sent: Thursday, March 28, 2019 10:01 AM
To: Theodore, Elisabeth; Jones, Stanton; Strach, Phillip J.
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Hi Elisabeth,

This plan seems reasonable to the State Defendants. We're really only interested in having a copy of whatever information that the plaintiffs retain from the subpoena. Once you decide what you believe is properly the subject of discovery, we can send you an FTP link or work out some other means of transferring the files. We

can agree to treat all of the documents as confidential when so designated. I'm not sure what cost would be involved in transferring a copy of the files that you are already processing for your own purposes. We're happy to discuss to better understand.

Paul

<image002.jpg> **Paul M. Cox**
Special Deputy Attorney General
Phone: (919)716-6932
pcox@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603

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

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, March 27, 2019 5:27 PM
To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Counsel:

In the course of our vendor's processing of the materials we received in response to our subpoena of Ms. Lizon, it has become apparent from the file and folder names that those materials may include personal information, such as tax returns and medical and family information. We have not opened any of these files and will not do so. Because the files at issue appear from their names to be sensitive, personal, and plainly irrelevant to the litigation, we do not believe that it would be appropriate or in the interest of any party to further disseminate these files. In light of Legislative Defendants' and State Defendants' requests for copies of the materials, we would propose the following approach.

First, our vendor Stroz would search for keywords in file and folder names that would indicate that the underlying document contains personal information, such as "tax," "medical," and the names of Dr. Hofeller's family. Our vendor would then pull out these personal files and then make a copy of everything that remains, and provide you with that copy.

Second, because the keyword search may be underinclusive, when we provide you with the remaining materials, we will designate all sensitive personal information that may remain, including personal financial, family, and health information, as confidential pursuant to the parties' forthcoming protective order.

Third, with respect to documents that were identified by the keyword search, we will provide Ms. Lizon with the option of having them returned to her. Again, we would not look at any document received in response to the subpoena to Ms. Lizon unless we are also providing that document to the other parties who have requested copies of the materials.

If this approach sounds acceptable to you, we can obtain a cost estimate. Please let us know if you would like to discuss this further.

Best,
Elisabeth

Elisabeth S. Theodore

Partner

Arnold & Porter

601 Massachusetts Ave., NW

Washington | District of Columbia 20001-3743

T: +1 202.942.5891

Elisabeth.Theodore@arnoldporter.com | www.arnoldporter.com

From: Jones, Stanton

Sent: Tuesday, March 26, 2019 2:57 PM

To: Strach, Phillip J.

Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Cox, Paul; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.

Subject: Re: Common Cause v. Lewis -- notice of subpoena compliance

Phil:

We received the electronic media on Wednesday, March 13, and provided them to the vendor the same day.

The vendor is Stroz Friedberg.

I'm not aware of any obligation to consult you on which vendor we'd use to process materials we received in response to our subpoena. We aren't asking legislative defendants to share the cost of processing the materials, only the cost of providing a copy to you, per Rule 45. Certainly let me know if you have a different understanding.

The vendor is still processing the materials.

We are inquiring with the vendor about the cost, logistics, and timing of providing you a copy. Same for the state defendants who also have requested a copy. We will let you know as soon as we have this information.

Regards,
Stanton

Sent from my iPhone

On Mar 26, 2019, at 10:11 AM, Strach, Phillip J. <phil.strach@ogletree.com> wrote:

Stanton: Thanks. Please let us know the date the media was received by plaintiffs, when plaintiffs sent them off to be processed, and which entity is being used to process the media. I note for now that we were not asked for our input on which entity to use or provided any information about possible costs prior to sending the data to be processed. Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Tuesday, March 26, 2019 10:02 AM
To: Strach, Phillip J. <Phil.Strach@ogletreedekins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, the items we received were all electronic media, namely four external hard drives and 18 thumb drives. We are having them processed and will let you know when we have them in a form that can be shared, as well as the cost of sharing under Rule 45.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Tuesday, March 26, 2019 9:54 AM
To: Jones, Stanton; Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencoock; Cox, Paul
Cc: Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton:

Thanks for this notice. Please send us a copy of the materials received today.

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Wednesday, March 20, 2019 9:12 PM
To: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedekins.com>; Strach, Phillip J. <Phil.Strach@ogletreedekins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedekins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencoock <NPencoock@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: Common Cause v. Lewis -- notice of subpoena compliance

Counsel:

Pursuant to N.C. R. Civ. P. 45, I write to give notice that we recently received materials in compliance with our February 13 subpoena to Stephanie Hofeller Lizon.

Regards,
Stanton

R. Stanton Jones
Arnold & Porter
601 Massachusetts Ave., NW | Washington | DC 20001-3743
T: +1 202.942.5563 | F: +1 202.942.5999
stanton.jones@arnoldporter.com | www.arnoldporter.com

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EXHIBIT Q

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

Phil, John, and Paul:

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

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

Let us know how you'd like to proceed.

Stanton

Stanton Jones

Partner

Arnold & Porter

601 Massachusetts Ave., NW

Washington | District of Columbia 20001-3743

T: +1 202.942.5563

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

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

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

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

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

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

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

Phil:

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

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

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

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

Regards,
Stanton

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

Dan:

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

Phil

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412
phil.strach@ogletree.com | www.ogletree.com | [Bio](#)

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

Phil and John,

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

Best,
Dan

Daniel Jacobson
Senior Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5602
Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

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

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

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

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

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

Phil and John:

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

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

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

Regards,
Stanton

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

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

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

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

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

Ms. Myers and Mr. Steele:

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

EXHIBIT R



NORTH CAROLINA GENERAL ASSEMBLY

June 27, 2017

VIA HAND DELIVERY

Dr. Thomas Hofeller

Dear Dr. Hofeller:

We require your professional assistance. The General Assembly will be drawing new legislative redistricting maps to include both House and Senate districts pursuant to an order from a federal district court. Based on your knowledge and experience, we believe you are best qualified to produce such maps. Therefore, we offer to engage you to produce such maps for possible presentation to the House and Senate Redistricting Committees for their consideration and ultimate use by the General Assembly.

OUR OFFER OF ENGAGEMENT IS SUBJECT TO THE FOLLOWING TERMS:

- You will produce a map of 120 House districts and a map of 50 Senate districts in North Carolina that complies with criteria adopted by the House and Senate Redistricting Committees (the "Committees"). The maps you produce may be presented to the Committees, the General Assembly or any third party in the sole discretion of the Co-Chairs.
- As a legislative contractor and consultant, your work will be subject to legislative confidentiality as prescribed by Article 17 of Chapter 120 of the General Statutes. Your work may also be subject to the doctrine of legislative privilege as provided by the common law in North Carolina. By directive of the Committees, these protections will accrue to the benefit of the Co-Chairs of the Committees, and the Co-Chairs shall have the sole discretion to grant any request for their waiver. Finally, and notwithstanding the foregoing, all drafting and information requests to you and documents prepared by you concerning redistricting shall no longer be confidential and shall become public records upon the act establishing the relevant district plan becoming law.
- To allow us and you to better to predict the cost of this engagement, we are prepared to offer compensation to you in the form of a flat fee equal to \$50,000.00 payable upon

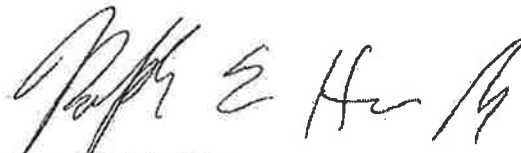
LDNC001879

receipt by the Legislative Services Officer of an invoice from you for work performed and upon prior approval from the President Pro Tempore of the Senate and the Speaker of the House.

Should the terms of this engagement be acceptable to you, please indicate your acceptance in the space marked below. We appreciate your willingness to serve in this manner, and we look forward to working with you pursuant to the Committees' directive.


Sincerely,


Rep. David Lewis


Sen. Ralph Hise

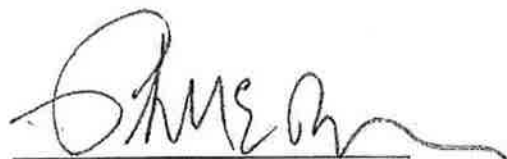
Enclosures

Agreed and Accepted to by:


Dr. Thomas Hofeller

Date: June 27, 2017

Agreement Authorized and Approved:


Sen. Phil Berger
President Pro Tempore



Rep. Tim Moore
Speaker

EXHIBIT S



**NORTH CAROLINA GENERAL ASSEMBLY
JOINT SELECT COMMITTEE ON CONGRESSIONAL REDISTRICTING**

February 16, 2016

VIA HAND DELIVERY

Dr. Thomas Hofeller

Dear Dr. Hofeller:

We require your professional assistance. Earlier today, a motion prevailed in the meeting of the Joint Select Committee on Congressional Redistricting (the "Committee") authorizing the Co-Chairs to engage a map drawing expert to produce a contingent Congressional Map or Maps using the attached criteria prevailing today on individual motions in the Committee (the "Adopted Criteria"). Based on your knowledge and experience, we believe you are best qualified to produce such a map or maps. Therefore, we offer to engage you to produce such a map for possible presentation to the Committee and ultimate use by the General Assembly.


OUR OFFER OF ENGAGEMENT IS SUBJECT TO THE FOLLOWING TERMS:

- You will produce a map of 13 congressional districts in North Carolina that complies with the Adopted Criteria. The map you produce may be presented to the Committee, the General Assembly or any third party in the sole discretion of the Co-Chairs.
- As a legislative contractor and consultant, your work will be subject to legislative confidentiality as prescribed by Article 17 of Chapter 120 of the General Statutes. Your work may also be subject to the doctrine of legislative privilege as provided by the common law in North Carolina. By directive of the Committee, these protections will accrue to the benefit of the Co-Chairs of the Committee, and the Co-Chairs shall have the sole discretion to grant any request for their waiver. Finally, and notwithstanding the foregoing, all drafting and information requests to you and documents prepared by you concerning redistricting shall no longer be confidential and shall become public records upon the act establishing the relevant district plan becoming law.
- To allow us and you to better to predict the cost of this engagement, we are prepared to offer compensation to you in the form of a flat fee equal to \$25,000.00 payable upon

receipt by the Legislative Services Officer of an invoice from you for work performed and upon prior approval from the President Pro Tempore of the Senate and the Speaker of the House.

Should the terms of this engagement be acceptable to you, please indicate your acceptance in the space marked below. We appreciate your willingness to serve in this manner, and we look forward to working with you pursuant to the Committee's directive.

Sincerely,


Rep. David Lewis


Sen. Bob Rucho

Enclosures

Agreed and Accepted to by:


Dr. Thomas Hofeller

Date: February 16, 2016

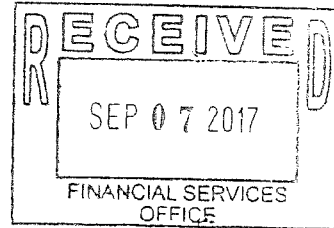
Agreement Authorized and Approved:

Sen. Phil Berger
President Pro Tempore

Rep. Tim Moore
Speaker

EXHIBIT T

INVOICE



Thomas B. Hofeller, Ph.D.



September 1, 2017

Mr. Paul Coble
Legislative Services Officer
Room 2129, Legislative Building
16 West Jones Street
Raleigh, NC 27601

ENTERED

For professional services rendered in regard to design and construction of a new North Carolina State Senate and State House of representatives redistricting plans constructed during August of 2017.

Amount Due

✓ \$50,000.00

My Tax ID is:

Thomas B. Hofeller, Ph.D.

OKAY to pay.

9/7/17

N.C. GENERAL ASSEMBLY
INVOICE APPROVAL

VENDOR #	550627218	DIST #	92
AUDIT DATE	9/12/17	CO.	0101
ACCT.	532199	CTR.	1211
AUDIT APPROVAL	/s/		
FIN. SER. MGR. APPROVAL	/Cam		