

HIGGINS]] BENJAMIN

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June 28, 2019
Wake County Clerk of Court
Civil Filing Division
PO Box 361
Raleigh N. C. 27602

By US Mail or Hand Delivery

Re. *Common Cause et al. vs. Lewis, et al.* (18 CVS 014001)
Supplemental Affidavit of Dalton Lamar Oldham

Dear Sir or Madam,

Attached are documents we are filing by mail or by hand with the Clerk of Court in Wake County on Monday, July 1, 2019. The documents include the following: a Reply Memorandum and a Supplemental Affidavit of Dale Lamar Oldham. In compliance with the Case Management Order sending copies of these filings to the Judicial Fellow and counsel for all parties in the *Common Cause vs. Lewis* redistricting case.

Please call me if you have any questions.

Sincerely yours,

Robert N Hunter, Jr.



cc. Counsel of Record.

cc. Trial Court Administrator.

STATE OF NORTH CAROLINA
WAKE COUNTY

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

Common Cause; *et al*

Plaintiffs,

v.

**Representative David R. Lewis, in his
official capacity as senior chairman of the
House Select Committee on Redistricting,
*et al***

Defendants.

GEOGRAPHIC STRATEGIES, LLC'S
REPLY IN SUPPORT OF ITS MOTION
TO DESIGNATE ITS MATERIALS AS
HIGHLY CONFIDENTIAL UNDER THE
PROTECTIVE ORDER AND TO
COMPEL PRODUCTION

Plaintiffs' Response to Geographic Strategies, LLC's ("Geographic Strategies" or "Movant") Motion for Leave to Request an Order of Protection, and in the Alternative, to Intervene Under Rules 45 and/or 24 ("Response" or "Resp.") illustrates that this discovery dispute will produce no additional relevant information having to do with this litigation. The Response concedes that most of the 76,000 Hofeller Files, which Plaintiffs possessed for months and have extensively examined, will not be used in these proceedings.

In their recently-filed Motion in Limine ("MIL"), Plaintiffs seek to use only a tiny subset of the Hofeller Files at trial. Those files do not belong to Geographic Strategies, and Geographic Strategies hereby withdraws its confidentiality designations with respect to those files. The remainder of the Hofeller Files, the Movant has not examined. Should the Plaintiffs identify additional files it intends to use at trial, the Movant can and would examine them, but until any relevant files to this litigation are inspected and produced by the Plaintiffs, the remaining Hofeller Files should be marked HIGHLY CONFIDENTIAL to prevent irreparable harm to Geographic Strategies and its clients. Plaintiffs never seriously contest that Geographic Strategies will be irreparably harmed if its irrelevant, HIGHLY CONFIDENTIAL files are made public. And

Plaintiffs' ability to try *this case* in the next few weeks if the relief sought here is granted will be unimpaired.

Granting Geographic Strategies' motion, will prevent unnecessary labor on the part of the Court to establish which files are owned by which clients (of which there are many). As discussed herein, granting this motion will also mitigate the need for the court to consider whether there has been any violation of the duty of Plaintiffs' counsel to return privileged information to its rightful owners. That examination would be time-consuming and costly for all parties, potentially engendering additional rancor among the attorneys in this litigation.

The remainder of the Plaintiffs' Response is based on an unfortunate ad hominem attack on Dalton Lamar Oldham. This attack misdirects the Court's attention from the legal issues regarding this discovery dispute. Nor is the attack factually based. Should the Plaintiffs seek to subpoena Mr. Oldham in Lexington County, South Carolina, where he resides, he will respond appropriately to the subpoena, but it is not this Court's task to act as a process agent for the Plaintiffs. Furthermore, given that the Plaintiffs in this litigation are only using a few of the Hofeller Files, and none that belong to Geographic Strategies, the request to have Mr. Oldham deposed is untimely, overbroad, and—if he were required to produce additional documents—disproportionate.

ARGUMENT

I. PLAINTIFFS' MIL IDENTIFIES THE ONLY DOCUMENTS IN THE HOFELLER FILES THAT ARE RELEVANT TO THIS CASE.

After Geographic Strategies filed this Motion, Plaintiffs filed their MIL seeking “to establish the admissibility of certain files of Dr. Thomas B. Hofeller that Plaintiffs obtained in this case . . .” Pls' MIL at 1. The MIL represents that the “relevant Hofeller files” are either Maptitude files for the North Carolina 2017 redistricting or were located in folders labeled “NC 2017

Redistricting” or “2017 Redistricting.” *Id.* at 8-9. And it contends that “all of the Hofeller files that Plaintiffs seek to introduce at trial are admissible as public records” under “North Carolina Rule of Evidence 803(8).” *Id.* at 7-9 (“Dr. Hofeller’s work in developing the 2017 Plans constitute public records under the plain terms of his contract with Legislative Defendants.”).

The Legislative Defendants have challenged the use of these files for various reasons, but the files identified do not belong to Geographic Strategies. As a result, Geographic Strategies hereby withdraws its designations with respect to those files. Thus, the relief requested by Geographic Strategies has no bearing whatsoever on Plaintiffs’ ability to try *this case*.

II. THE REMAINDER OF THE HOFELLER FILES ARE IRRELEVANT TO THIS CASE AND SHOULD BE DESIGNATED AS HIGHLY CONFIDENTIAL.

On the merits of Geographic Strategies’ Motion, the Response is mostly nonresponsive. Importantly, the Response does not even *attempt* to dispute the key points that support granting the relief sought here.

First, the Response does not dispute that nearly all of the Hofeller Files are irrelevant to this case—nor could it in light of Plaintiffs’ MIL. Thus, Plaintiffs cannot demonstrate a need for the files in this litigation in the first place, let alone a reason why the files should fall outside the scope of the Protective Order. Indeed, it is an abuse of the discovery process to seek discovery in one case for use in another. *See Elm Energy & Recycling (U.K.) Ltd. v. Basic*, No. 96 C 1220, 1996 WL 596456, at *7 (N.D. Ill. Oct. 9, 1996) (“Although the federal rules allow for broad discovery, they do not sanction the use of discovery in one case as a sham for conducting discovery solely for a different case or to circumvent limitations on discovery in a different action.”); *State of California, v Burlington Coat Factory*, No. RG04162075, 2005 WL 5302634 (Cal. Super. Mar. 22, 2005) (Restraining litigant from “using confidential information obtained in one case for the purpose of unrelated cases”). It “burdens both the court and the parties” to “involve the court in a

controversy with which it is not familiar and over which it lacks control.” *SmithKline Beecham Corp. v. Synthon Pharm., Ltd.*, 210 F.R.D. 163, 166–67 (M.D.N.C. 2002) (rejecting modification of protective order to allow documents to be used in other litigation).¹ And that is exactly what Plaintiffs did here by requesting all of the devices from Ms. Hofeller regardless of the files’ relationship to this case and failing to cooperate with respect to confidentiality designations on irrelevant materials.

Plaintiffs’ *only* purpose in opposing Geographic Strategies’ designations is to allow them to publicly disclose these unrelated files and use them in other proceedings. Indeed, Plaintiffs concede as much in their Response. Resp. at 17-19.² Thus, they cannot credibly claim *any* prejudice *in this case* from marking the irrelevant files as HIGHLY CONFIDENTIAL. And their suggestion that they have been compelled to waste time and resources responding to this motion lacks merit. Had Plaintiffs simply accepted the designations and moved forward with their efforts to use the limited subset of allegedly relevant files in this case, there would have been no burden on this Court or Plaintiffs’ trial preparation at all.

Second, Plaintiffs do not dispute that the Hofeller Files meet the definition of HIGHLY CONFIDENTIAL under the Protective Order, and that Geographic Strategies was authorized to designate them as such—as it did on June 13, 2019—under the express terms of the Order. In fact, nowhere in their Response do Plaintiffs address the language of the Protective Order. Nor could they seriously dispute that the Protective Order was designed to protect precisely the types of

¹ See also *Fawcett v. I.R.S.*, No. 10-60111-CIV, 2010 WL 1855961, at *1 (S.D. Fla. May 6, 2010) (“No law has been cited that a party in one case can conduct discovery for use in another case.”).

² The files released publicly to date do not belong to Geographic Strategies. Thus, to be clear, Geographic Strategies is not asking this Court to designate those files or otherwise “put the genie back in the bottle” where files have been publicly filed in other court proceedings.

confidential business information at issue here. Indeed, Geographic Strategies' contracts specifically identify client files as confidential and privileged and *require* the company to keep them that way. June 28, 2019 Affidavit of Dalton Lamar Oldham ("June 28 Aff.") ¶¶ 2-3 & Ex. A.

The Protective Order is a blanket protective order intended to allow the parties and third-parties to designate any files they "reasonably and in good faith believe[]" contain HIGHLY CONFIDENTIAL information. Protective Order ¶ 3. Thus, this Court previously recognized that Plaintiffs could, under the Protective Order, mark "any files or folders" from the Hofeller Files that "they consider private as 'HIGHLY CONFIDENTIAL/OUTSIDE ATTORNEYS' EYES ONLY' prior to production." 5/1/2019 Order at 5. Indeed, Plaintiffs themselves marked over 1,000 *third-party files* as HIGHLY CONFIDENTIAL prior to providing them to the other parties in the case.

Given the entry of the Protective Order, the Court plainly has the authority to grant the relief requested by Geographic Strategies. Rule 26(c) of the North Carolina Rules of Civil Procedure affords the trial court the authority to fashion any order to protect a party or *person* from any abuse of the discovery process. N.C. Gen. Stat. Ann. 1A-1, Rule 26(c) ("[T]he judge of the court in which the action is pending may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, or undue burden or expense . . ."). "This protection is available . . . for a recipient of a subpoena duces tecum under Rule 45(d)." 2 G. Gray Wilson, *North Carolina Civil Procedure*, § 26-10 (1995) (citing *Hebert v. Lando*, 441 U.S. 153 (1979)).

Thus, while Plaintiffs make broad proclamations about discovery being available for public consumption, Resp. at 17-19, they ignore that the rules governing *this case* ensure that confidential

information will not be made public and “shall be used by the Parties solely in connection with this litigation, and not for any political, business, commercial, competitive, personal, governmental, or other purpose or function whatsoever . . .” Protective Order ¶ 3.

Plaintiffs respond with by arguing that the burden is on Geographic Strategies to identify specific confidential and/or privileged files. This argument is paradoxical, given that the Protective Order prevents Movant from accessing the files to examine them until the motion to intervene is granted. Even after the motion were granted, the cost and time it would take the Movant to review the files would be extensive. Movant’s suggestion to the Court has the benefit of being a low-cost solution, which will not delay the trial or inconvenience the parties. Any other solution would be problematic. To designate the Hofeller Files under the Protective Order, Geographic Strategies only needs to “reasonably and in good faith believe[]” that the files contained HIGHLY CONFIDENTIAL information. Protective Order ¶ 3. Once the Hofeller Files had been designated under the Protective Order, it was incumbent on *Plaintiffs* to “seek a determination by the Court whether any information or material should be subject to the terms” of the Protective Order if they disagreed with that designation. Protective Order ¶ 7(e).

Moreover, Geographic Strategies does not have the files that Ms. Hofeller produced because they are yet to be provided by Plaintiffs or anyone else. Nor could Geographic Strategies have simply obtained the files from the Legislative Defendants. The Legislative Defendants designated the Hofeller Files HIGHLY CONFIDENTIAL on May 28, 2019, and they would risk violating the Protective Order if they were to share the files with Geographic Strategies after Plaintiffs had argued in their Motion for Direction that the Order does not apply to non-producing parties. Geographic Strategies requested the file index from the Legislative Defendants, and they refused even that request because the extensive file paths contain HIGHLY CONFIDENTIAL

information. Finally, the idea that Plaintiffs would have simply provided the files had they been asked is belied by the fact that Geographic Strategies' June 13 letter and this Motion sought production of the files, and Plaintiffs have made no offer to do so.

Plaintiffs also argue that the Hofeller Files contain files that do not belong to Geographic Strategies. That is true, though based on what Geographic Strategies has been able to discern about the files from filings in this case, other cases, and the press, a substantial portion of the files plainly do belong to Geographic Strategies. June 15, 2019 Affidavit of Dalton Lamar Oldham ("June 15 Aff.") ¶¶ 7-9; *see also* June 28 Aff. ¶ 2 & Ex. A. Plaintiffs' arguments that Geographic Strategies did not own the files at the time of Dr. Hofeller's death is directly contradicted by Mr. Oldham's initial affidavit, as well as by the LLC's continued existence. June 15 Aff. ¶ 7-2; *see also* June 28 Aff. ¶ 5 & Ex. B. Moreover, to the extent Dr. Hofeller kept personal or other non-Geographic Strategies files on Geographic Strategies computers, those files would likely belong to Geographic Strategies. *See Christie v. Nat'l Inst. for Newman Studies*, No. CV 16-6572 (FLW), 2019 WL 1916204, at *7 (D.N.J. Apr. 30, 2019) (denying Computer Fraud and Abuse Act claim against company for accessing employee's work computers that had plaintiff's personal files because the plaintiff had "no ownership of either device" and because the employer was "the rightful owner of those machines, consistent with its ownership rights, [the employer had] the authority to decide who has access"). Finally, Plaintiffs' argument is inconsistent with their previous designation of Dr. Hofeller's personal information as HIGHLY CONFIDENTIAL—information they did not own.

In any event, Plaintiffs' arguments completely miss the point. It is exactly because Geographic Strategies has not been able to review the files that the Movant's requested relief constitutes the most modest, non-intrusive way to protect its confidential materials. Plaintiffs

would deny Geographic Strategies access to files they have had for months, then ask Geographic Strategies to review terabytes of data in an impossibly short timeframe on the eve of trial. Designating all of the Hofeller Files as HIGHLY CONFIDENTIAL (other than those identified in Plaintiffs' MIL) ensures that Geographic Strategies will not be irreparably harmed by the release of its confidential information while inflicting no real inconvenience on Plaintiffs. *See SmithKline Beecham Corp.*, 210 F.R.D. at 168 (The "wholesale release of documents creates problems when doing so impinges on a wide variety of confidentiality, from trade secrets to less confidential business information. The burden of reviewing such a wholesale request constitutes grounds for denying the same."); *see also* June 28 Aff. ¶ 4 (describing prejudice to Geographic Strategies if its confidential information is disclosed). There is no need to postpone the trial or impose the substantial time and burden of a full review on any of the parties because Plaintiffs now concede that the files have no relevance to this case. Designating these irrelevant files under the Protective Order could not conceivably prejudice Plaintiffs' ability to try their case. At the end of the day, Plaintiffs' 26-page Response offers no answer to these commonsense, practical points.

Additionally, Plaintiffs argue that Geographic Strategies' motion is untimely. Resp. at 24-25. Setting aside the fact that Geographic Strategies filed its motion as soon as Plaintiffs indicated their refusal to treat the Hofeller Files as HIGHLY CONFIDENTIAL, this argument once again ignores the terms of the actual Protective Order entered by the Court in this case. The Protective Order specifically states that "[i]nadvertent failure to designate material as Confidential material at the time of production may be remedied by supplemental written notice" and that "[o]nce such notice is received, all documents, material, or testimony so designated shall be treated as if they had been initially designated as Confidential material." Protective Order ¶ 15. Plaintiffs' Response simply fail to address this language because it is contrary to their argument.

Finally, Plaintiffs' counsel have an ethical duty to return any privileged files under the relevant rules of the North Carolina Code of Professional Responsibility. Rule 4.4(a) of the Rules for Professional Conduct of the N.C. State Bar provides that in "representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." N.C. Rev. R. Prof. Conduct, Rule 4.4(a) (2015). The commentary on this section states as follows: "Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships such as the client-lawyer relationship." *Id.*, comment 1. Granting this motion will assist the Plaintiffs' counsel in meeting their professional responsibility.

III. PLAINTIFFS' FAILURE TO SERVE MR. OLDHAM DOES NOT JUSTIFY DENYING A PROTECTIVE ORDER.

Without a meritorious response to Geographic Strategies' arguments, Plaintiffs focus their Response on maligning Mr. Oldham. These arguments are also meritless.

First, the actions that Mr. Oldham allegedly took with respect to service are no more than speculation. Plaintiffs allege that (1) they attempted to effectuate service by Federal Express and no one signed for the package; (2) they emailed Mr. Oldham to say that they would be having a sheriff serve him; and (3) a sheriff once attempted to serve Mr. Oldham through his mother. Resp. at 3-4. Certainly, as a third party, Mr. Oldham was not required to accept service outside of the channels required by the rules, nor was he required to sign for an unidentified package. The email does not constitute anything other than a notification that service would be attempted at some future date—Plaintiffs do not argue otherwise—but this speculative future service never occurred.

Even if this were the end of the story, it would be nothing like the egregious examples of evasion in the cases Plaintiffs cite. *See e.g., Application of Barbara*, 14 Misc. 2d 223, 225–26, 180 N.Y.S.2d 924 (Sup. Ct. 1958), *aff'd*, 7 A.D.2d 340, 183 N.Y.S.2d 147 (1959) (finding service effectuated where individual drew the curtains, lied about a party being ill, and refused to open the door when police officer tried to serve party, leading police officer to use a “bull horn” to “announce[] the contents of the subpoena a dozen or more times from various positions about the petitioner’s dwelling . . . [such that] his voice could be heard by another trooper stationed a fifth of a mile from the house . . .”); *McKellar v. State Farm Fire & Cas. Co.*, No. 14-CV-13730, 2016 WL 304759, at *8 (E.D. Mich. Jan. 26, 2016) (discussing individual who “evaded service on eight separate occasions,” set up a meeting to be served and did not attend, spoke on the phone with a process server, and ultimately triggered “court-ordered alternate service of [a] subpoena by mail and posting.”); *Matter of Cohen*, 139 A.D.2d 221, 223, 530 N.Y.S.2d 830 (1988) (actively running away from process servers to “the parked car of his wife who was waiting to pick him up”).

More importantly, however, Plaintiffs conveniently leave out key details about what actually happened. At the time Plaintiffs attempted to serve their subpoena, Mr. Oldham no longer lived at 1119 Susan Street, Columbia, South Carolina 29210, the address where service was attempted. *See* June 28 Aff. ¶¶ 6-7; Resp. Exs. C, D, E, G. At the time service was attempted, Mr. Oldham lived at 137 Edgewater Lane in Lexington, South Carolina. June 28 Aff. ¶ 7. Indeed, as Plaintiffs admit in their motion, the Columbia, South Carolina address was no longer listed as the registered agent location for Geographic Strategies, LLC when Plaintiffs attempted to have the sheriff serve Mr. Oldham at that address. Resp. at 4; June 28 Aff. ¶ 6. And contrary to Plaintiffs’ representations in their Response, Mr. Oldham, did not “refuse[] to accept FedEx delivery of the

subpoenas.” Resp. at 3. The FedEx delivery was refused by Mr. Oldham’s 89-year-old mother, who still lives at 1119 Susan Street, Columbia, South Carolina 29210. June 28 Aff. ¶ 7.

Second, even if Plaintiffs’ description of Mr. Oldham’s actions were accurate, and Mr. Oldham’s actions were as egregious as Plaintiffs contend, it would not warrant denial of the relief requested here. As an initial matter, all of the cases cited by Plaintiffs are factually distinguishable, and none suggest that the modest relief requested here—the protection of irrelevant files produced by a different third party that will not be used during the litigation—should be denied because of Mr. Oldham’s alleged actions. Plaintiffs’ principal case is a 33-year-old non-binding opinion that refused to set aside a default judgment analyzing a four-factor test pursuant to the Federal Rules of Civil Procedure. *See Currie v. Wood*. 112 F.R.D. 408, 409–10 (E.D.N.C. 1986). Setting aside the fact that the case has no bearing on this state law evidentiary question, even the cited principle—that a litigant’s utter refusal to accept papers is relevant in deciding whether to vacate a default judgment—is not a bright line rule. In *Agnew v. E*Trade Sec. LLC*—to which the plaintiffs also cite—a court confronted with a nearly identical set of facts *granted* the party’s request to set aside default judgment, despite finding that the moving party “acted in bad faith, engaged in dilatory tactics, and engaged in willful misconduct that led directly to the default.” 811 F. Supp. 2d 1177, 1183–85 (E.D. Pa. 2011). In short, there is no rule stripping this court of discretion and precluding Geographic Strategies from obtaining the relief it seeks.

Indeed, the focus on Mr. Oldham is a non sequitur. Allegations of evading service do not change the fact that Plaintiffs improperly obtained confidential and privileged files that have nothing to do with this case and now oppose protecting those files under the Court’s blanket Protective Order. Geographic Strategies has obligations to its clients regarding these files, *see* June 28 Aff. ¶ 2 & Ex. A, that should not be ignored.

Third, Plaintiffs have been in possession of the evidence they now provide in support of their allegations against Mr. Oldham *since February*. If Mr. Oldham was, as Plaintiffs now contend, critical to their case, and he so clearly evaded service such that service was effectuated back in March, they should have sought relief from the Court while discovery was open. In reality, once Plaintiffs obtained the files they wanted from Ms. Hofeller without having to worry about objections from her, they stopped pursuing Mr. Oldham—who would have been able to raise objections. They challenge Mr. Oldham’s actions now only because they desperately want to use Geographic Strategies’ irrelevant documents in other cases and the court of public opinion. Even now, Plaintiffs have not moved for any relief based on the alleged evasion of service and raise the issue only in retaliation for Geographic Strategies’ attempt to protect its confidential client information. This issue should have no effect on Geographic Strategies’ request for relief here.

IV. THE COURT SHOULD NOT ORDER DISCOVERY FROM MR. OLDHAM OR GEOGRAPHIC STRATEGIES.

Plaintiffs’ proposed alternative relief of ordering Mr. Oldham and Geographic Strategies to comply with the unserved subpoenas should be denied. Fact discovery closed weeks ago. If Plaintiffs wanted to pursue this discovery, they should have done so when the alleged evasion of service occurred in March. Despite the fact that Plaintiffs repeatedly quote this Court as saying in February that Mr. Oldham may have relevant information, they have not offered any indication of what relevant information they expect to obtain from Mr. Oldham that they do not already have in their possession. Plaintiffs repeatedly claim that Mr. Oldham possesses all of the Hofeller Files already, meaning any document discovery would be duplicative. Given that only a small number of the Hofeller Files are relevant here, there is no basis to believe that reopening discovery would add anything material to this litigation. Again, Plaintiffs seek only to fish for discovery material to use in *other proceedings and the press*, and that improper request should be denied.

CONCLUSION

For all the reasons stated above, and in Geographic Strategies' motion, the court should designate the Hofeller Files as **HIGHLY CONFIDENTIAL** under the Protective Order. In the alternative, this Court should declare Geographic Strategies to be the Producing Party or otherwise amend the Protective Order to allow parties and non-parties to designate files under the Protective Order, regardless of whether they are a producing or receiving party, and order that the Hofeller Files be designated **HIGHLY CONFIDENTIAL** under the amended Protective Order. The Court should also compel production of the Hofeller Files in their entirety to Geographic Strategies, and, in order to ensure that anyone to whom the Hofeller Files have already been shared may be brought within the Protective Order, Plaintiffs should identify all persons or entities with whom they have shared any portion of the Hofeller Files.

Respectfully submitted,

Dated: June 28, 2019

A handwritten signature in blue ink, reading "Robert Neal Hunter, Jr.", written over a horizontal line.

Robert Neal Hunter, Jr.
NC State Bar No. 5679
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Counsel for Geographic Strategies

STATE OF NORTH CAROLINA
WAKE COUNTY

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

Common Cause; *et al*

Plaintiffs,

v.

**Representative David R. Lewis, in his
official capacity as senior chairman of the
House Select Committee on Redistricting,
*et al***

Defendants.

AFFIDAVIT OF DALTON LAMAR
OLDHAM, ESQ. SUPPLYING
DOCUMENTS IN FURTHER SUPPORT
OF GEOGRAPHIC STRATEGIES, LLC'S
MOTION FOR PROTECTIVE ORDER

AFFIDAVIT OF DALTON LAMAR OLDHAM

The undersigned Affiant, having been duly sworn or affirmed, deposes and states that the Affiant is competent to give the testimony below:

1. My name is Dalton Lamar Oldham and I am a licensed attorney in South Carolina and President of Geographic Strategies, LLC.
2. Attached to this affidavit as Exhibit A is a redacted 2011 retainer letter between Geographic Services, LLC and one of its clients requiring Geographic Strategies, LLC to keep confidential information produced for that client. My attorney shall have available for production at the hearing an unredacted copy, should the court need to review the redactions made for privilege and confidentiality purposes, in determining whether it should be disclosed.
3. From 2011 to present, all work performed by Geographic Strategies, LLC for this client was at the direction of the client's Chief Counsel, an attorney. Under the auspices of Geographic Strategies, LLC, and pursuant to the retainer agreement described above, I provided confidential legal advice to the Chief Counsel on a number of topics,

including whether particular redistricting maps complied with the requirements of the Voting Rights Act and state law. I also provided the Chief Counsel with analysis of ongoing redistricting litigations. In providing this advice, I relied on Tom Hofeller as an expert demographer. His input and analysis were necessary to inform the advice I provided to the Chief Counsel. Neither this client, nor any other client, has waived privilege in the advice and communications provided by Geographic Strategies.

4. If Geographic Strategies, LCC's confidential documents became public, Geographic Strategies would suffer considerable prejudice. First, the public, including redistricting consultants working for other parties in redistricting cases, would be able to learn Geographic Strategies' proprietary methods of analyzing redistricting maps. Geographic Strategies considers these methods to be trade secrets. Second, Tom Hofeller had in his possession Geographic Strategies' work product, including redistricting strategy guides developed for a client in anticipation of redistricting litigation. If these documents become public, it will harm not only Geographic Strategies, but its client as well.
5. Attached to this affidavit as Exhibit B is a Certificate of Existence for Geographic Strategies, LLC showing that Geographic Strategies is an LLC in good standing in the state of South Carolina. As the sole surviving Member-Manager of Geographic Strategies, LLC, I would have assumed all ownership and control of Geographic Strategies, LLC upon Tom Hofeller's death, even in the absence of the mutual survivorship agreement described in my June 28 affidavit.
6. Prior to March 1, 2019, I moved to 137 Edgewater Lane, Lexington, South Carolina 29072 and no longer resided at 1119 Susan Street, Columbia, South Carolina 29210.

On March 11, 2019, I updated the registered service address for Geographic Strategies, LLC, to reflect my current address. On March 18, 2019, I updated my driver's license to reflect my current address. A copy of my driver's license is attached as Exhibit C.

7. I was not present at 1119 Susan Street, Columbia, South Carolina 29210 when FedEx attempted delivery of the subpoena, and I did not refuse to receive the FedEx deliveries. The FedEx delivery was refused by my 89-year-old mother, who still lives at that address. Similarly, I was not present at 1119 Susan Street, Columbia, South Carolina 29210 when the Richland, County Sherriff's Department attempted service at that address.

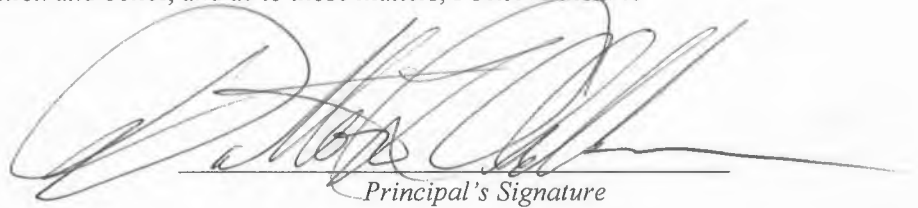
AFFIDAVIT

Washington, District of Columbia

Dalton Lamar Oldham, appearing before the undersigned
Name of principal

notary and being duly sworn, says that:

The contents of the foregoing affidavit are true to my own knowledge, except as to matters stated on information and belief, and as to those matters, I believe them to be true.


Principal's Signature

Sworn to (or affirmed) and subscribed before me this the 28 day of June,
2019.

(Official Seal)

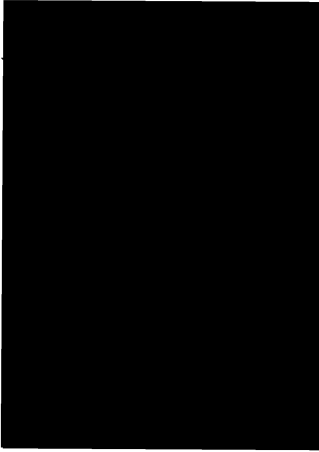


Kimberly Faulk
Official Signature of Notary

Kimberly Faulk, Notary Public
Notary's printed or typed name

My commission expires: 3/31/2022


EXHIBIT A





June 6, 2011

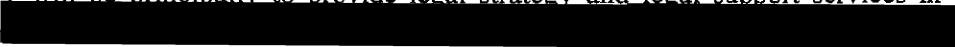


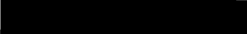
Dr. Thomas Hofeller
Geographic Strategies, LLC
1119 Susan Street
Columbia, South Carolina 29210

Dear Dr. Hofeller:


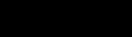
Upon the proper signatures by all parties hereto, this letter will serve as the AGREEMENT between you, Thomas Hofeller for Strategic Direction ("INDEPENDENT CONTRACTOR"), and 


This AGREEMENT is made and entered into this 6th day of June 2011, by and between

 and
Geographic Strategies, LLC, with principal offices located at 1119 Susan Street, Columbia, South Carolina, 29210. In consideration of the mutual promises set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties,  and INDEPENDENT CONTRACTOR hereby agree as follows:

The WORK AND SERVICES to be performed by the INDEPENDENT CONTRACTOR under this AGREEMENT will be principally to provide legal strategy and legal support services in furtherance of the 
. INDEPENDENT CONTRACTOR agrees to work with  staff and consultants in coordinating and implementing WORK AND SERVICES as directed, and to provide status reports to the  as requested.

Both parties agree to the following requirements as related to the aforementioned WORK AND SERVICES:

1. INDEPENDENT CONTRACTOR will provide accurate status reports as requested.
2. INDEPENDENT CONTRACTOR will only use materials approved by  if publishing articles or materials on  behalf.

During the course of performance of this AGREEMENT, INDEPENDENT CONTRACTOR may come into the possession of confidential information that pertains to  business, including, but not limited to, records, papers, reports, descriptive and pictorial material, printed or written technical information, drawings, reproductions, samples, models, lists, strategies and procedures. INDEPENDENT CONTRACTOR acknowledges that any and all of the foregoing,

along with any and all other information provided to, generated by, or otherwise becoming known to INDEPENDENT CONTRACTOR, its directors, officers, employees, consultants, or agents in connection with or incident to this AGREEMENT, is privileged and confidential information in any form, and INDEPENDENT CONTRACTOR will not retain, duplicate, distribute, or otherwise use any such information, in any manner, or for any purpose not necessary to the furtherance of the terms of this AGREEMENT. Confidential information will not be willfully or negligently divulged or made accessible to any third party. Confidential information as described above is the exclusive property of [REDACTED] and will be immediately returned to [REDACTED] upon request or upon completion of this AGREEMENT.

INDEPENDENT CONTRACTOR agrees and shall instruct its employees, if any, that all services, records, papers, reports, descriptive and pictorial material, printed or written technical information, drawings, reproductions thereof, samples, and models produced by INDEPENDENT CONTRACTOR during its performance of the WORK AND SERVICES under this AGREEMENT shall be considered "works made for hire," and are the exclusive property of [REDACTED], the nature and contents of which shall not be disclosed to others without the prior written permission of [REDACTED].

INDEPENDENT CONTRACTOR may not retain any third party to assist with or provide additional WORK AND SERVICES without the express written authorization of [REDACTED].

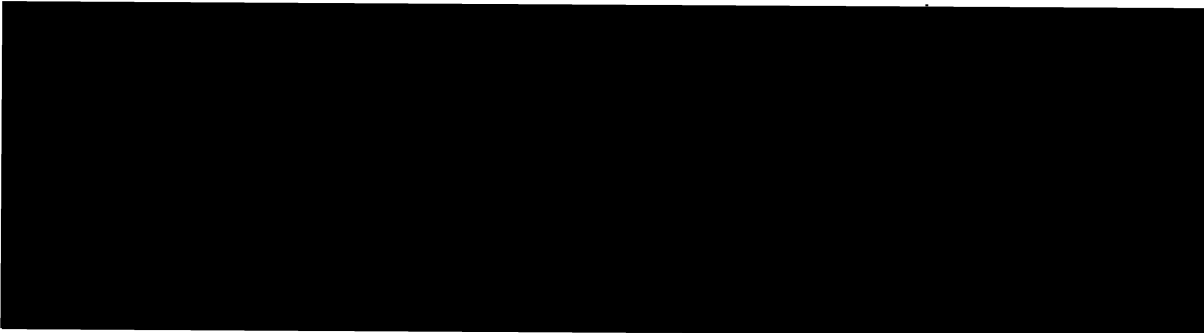
In return for and upon satisfactory completion of the WORK AND SERVICES performed by the INDEPENDENT CONTRACTOR named herein, [REDACTED] agrees to pay INDEPENDENT CONTRACTOR a Fee of [REDACTED] per month. The Fees payable to INDEPENDENT CONTRACTOR for any period during the term hereof which is for less than one (1) month shall be a prorated portion of the Fees, based upon a thirty (30) day month.

INDEPENDENT CONTRACTOR shall submit an invoice for any and all WORK AND SERVICES completed under this AGREEMENT in order for Fees to be paid. Additionally, [REDACTED] shall reimburse INDEPENDENT CONTRACTOR for pre-approved, out-of-pocket expenses for long distance telephone, mail delivery services, postage, travel and travel related living expenses connected to the performance of the WORK AND SERVICES. Any remaining travel expenses shall be reimbursed [REDACTED] in accordance with [REDACTED] policy. Any and all expenses submitted for reimbursement by INDEPENDENT CONTRACTOR shall be paid at the sole discretion of [REDACTED].

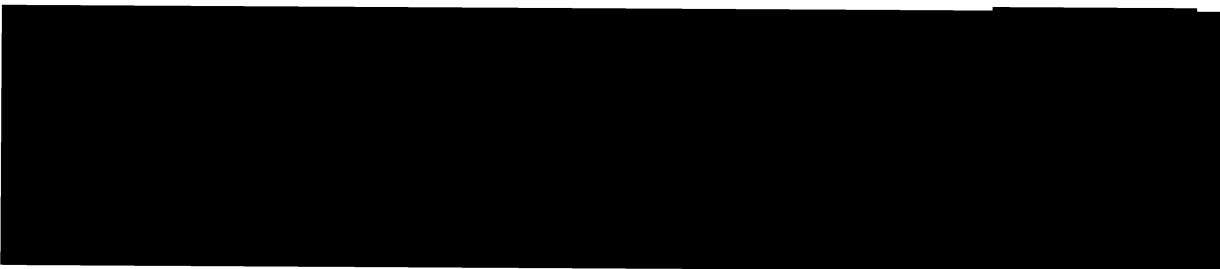
INDEPENDENT CONTRACTOR acknowledges and agrees that the Fees paid (if any) by [REDACTED] to the INDEPENDENT CONTRACTOR are based on an independent contractor relationship and in no way shall be construed to create any manner of agency or employment relationship. INDEPENDENT CONTRACTOR shall enter into no contract or agreement on behalf of [REDACTED] without the prior approval of an employee of [REDACTED] authorized to grant such approval. INDEPENDENT CONTRACTOR acknowledges sole responsibility for the payment of any taxes that might be applicable with respect to compensation earned for the services provided pursuant to this AGREEMENT and agrees that INDEPENDENT CONTRACTOR will make timely payment of such taxes. INDEPENDENT CONTRACTOR further agrees to fully indemnify [REDACTED] from any and all liability, including penalties, interest, attorneys fees, costs, or unpaid taxes, that might be assessed against [REDACTED] for not withholding or paying taxes on such compensation provided to INDEPENDENT CONTRACTOR.

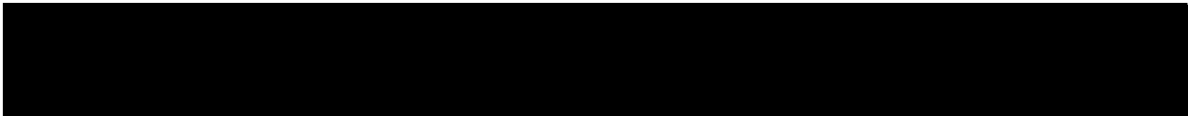
INDEPENDENT CONTRACTOR acknowledges and agrees that INDEPENDENT CONTRACTOR is subject to, throughout the duration of this AGREEMENT, a continuing duty to disclose to [REDACTED] any actual or potential conflicts of interest. Conduct that interferes with operations, promotes self-dealing, brings discredit to [REDACTED], or is offensive [REDACTED] will result in the termination of this AGREEMENT. INDEPENDENT CONTRACTOR may not obtain any improper personal benefit by virtue of its relationship with [REDACTED], and agrees to avoid even the appearance of impropriety. If any questions arise as to whether certain conduct is appropriate, [REDACTED] should be consulted.

INDEPENDENT CONTRACTOR acknowledges and agrees that [REDACTED] insurance policies do not extend coverage or benefits to INDEPENDENT CONTRACTOR, and that INDEPENDENT CONTRACTOR is solely responsible for acquiring and/or maintaining any insurance coverage desired by INDEPENDENT CONTRACTOR. Both Parties agree to indemnify, defend, reimburse and hold harmless the other Party and its members, officers, employees, agents and volunteers against any and all claims, demands, liabilities, actions, damages, costs, and expenses related thereto, including attorneys' fees, court costs, and other litigation expenses, and against all damages and liabilities of any kind or nature whatsoever, arising from, or attributable to, any negligent or unauthorized performance by the other Party in connection with this AGREEMENT. The Parties agree that the members, officers, employees, and agents of the other Party shall not be personally liable for any debt, liability, or obligation of the respective Parties. The Parties agree that, like all person, corporations, or other entities extending credit to, contracting with, or having any claim against the other Party, they may only look to the funds and property of the entity for payment of any debt, damages, judgment, decree or any money that may otherwise become due or payable to them from the other Party.




Neither party shall be liable to the other party for any delay or failure in the performance of its obligations under this AGREEMENT or otherwise if such delay or failure arises from any cause or causes beyond the control of such party including, without limitation, labor shortages or disputes, strikes, other labor or industrial disturbances, delays in transportation, acts of God, floods, lightning, fire, epidemic, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of the public enemy, explosives, riots, regulations or orders by the government, or subdivision thereof.





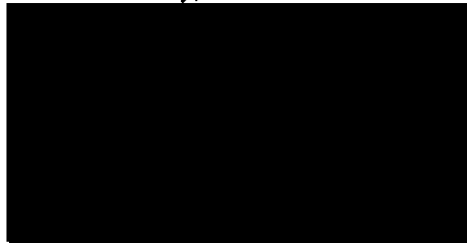
Either party to this AGREEMENT may terminate said AGREEMENT with or without cause upon thirty (30) day written notice to the other party. Activities covered by this AGREEMENT shall become effective ~~immediately~~ and shall continue for a period of no longer than December 31, 2011, unless terminated earlier. *Retrospectively beginning April 1, 2011*

not for T&B 7/11
 *7/11*

This AGREEMENT constitutes the entire AGREEMENT between  and the INDEPENDENT CONTRACTOR. There are no other promises, agreements or warranties affecting it.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed on their behalf by their respective, duly authorized, proper signatories.

Sincerely,



ACCEPTED AND AGREED TO:

For Geographic Strategies:
("INDEPENDENT CONTRACTOR")

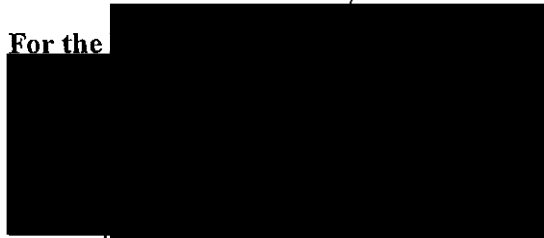

Thomas Hofeller

Vice President & Treasurer
Title

June 13, 2011
Date

Federal / Corporate Tax ID

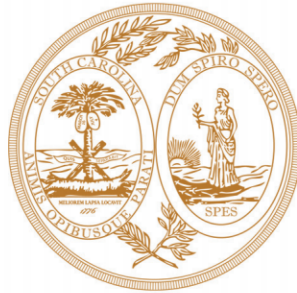
For the



7/8/11
Date

EXHIBIT B

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby Certify that:

GEOGRAPHIC STRATEGIES, LLC, a limited liability company duly organized under the laws of the State of South Carolina on June 16th, 2011, with a duration that is at will, has as of this date filed all reports due this office, paid all fees, taxes and penalties owed to the State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to S.C. Code Ann. §33-44-809, and that the company has not filed articles of termination as of the date hereof.

Given under my Hand and the Great Seal
of the State of South Carolina this 28th day
of June, 2019.


Mark Hammond, Secretary of State

EXHIBIT C

05/12/1957



4d DL#: 004885213
1 OLDHAM
2 DALTON LAMAR
8 137 EDGEWATER LN
LEXINGTON SC 290729723

3 DOB: 05/12/1957
4a Issued: 03/18/2019
4b Expires: 05/12/2027

Dalton Oldham

15 Sex: M 16 Hgt: 5'-11"
17 Wgt: 210 lb 18 Eyes: GRY
9 Class: D 9a End: None

12 Restrictions: A

5 DD 3200320202256918925



Henry McMaster
Governor

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing upon all parties to this matter by placing a copy in the United States Mail, First Class, postage prepared and addressed as follows:

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Caroline P. Mackie
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espeas@poynerspruill.com
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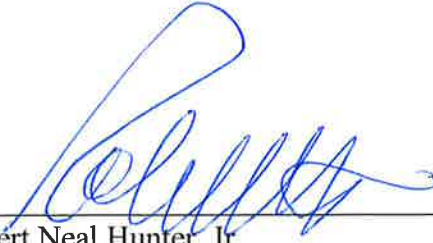
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Counsel for the Legislative Defendants

Dated: June 28, 2019



Robert Neal Hunter, Jr.
NC State Bar No. 5679
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Facsimile: (336) 274-4650

Counsel for Geographic Strategies