

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' OPPOSITION
TO INTERVENOR
DEFENDANTS' MOTION IN
LIMINE TO EXCLUDE
SOCIAL MEDIA EVIDENCE**

INTRODUCTION

The Court should deny Intervenor Defendants' motion to exclude Reginald Reid's Facebook posts about his political views. Mr. Reid put his policy and political views squarely in issue by intervening in this case on the basis of his "policy and political views." 1/29/19 Mot. to Intervene ¶ 2. Having put forward his "policy and political views" as the basis for intervention, Mr. Reid should not now be heard to claim that evidence of his policy and political views is irrelevant. It is highly relevant to the purported rights and injuries he claims in this case, and also to his credibility as a witness, in the event Intervenor Defendants call him to testify live. Nor are Mr. Reid's Facebook posts conveying his policy and political views unfairly prejudicial. It is hard to see any prejudice to Mr. Reid from evidence of the political views he holds, and any conceivable prejudice is outweighed by the relevance of this evidence to his role in this case.

BACKGROUND

Reginald Reid is one of seven North Carolina voters who intervened as defendants in this case to support the 2017 Plans. Mr. Reid, like the other Intervenors, "is a registered Republican who has consistently voted for Republican candidates for the General Assembly." 1/29/19 Mot. to Intervene ¶ 7. Mr. Reid ran as a Republican for state Senate in 2012 and for state House in 2018, but both times lost to the Democratic candidate. Ex. A (Reid Dep. 13:20; 82:1-8).

Like the other Intervenors, Mr. Reid intervened on the basis of a purported "right to representation by representatives who share [his] policy and political views." *Id.* ¶ 2. Mr. Reid asserted that the relief Plaintiffs seek in this case "would impair" this purported right to a representative who shares his "policy and political views." *Id.* Specifically, Mr. Reid alleged that Plaintiffs' proposed relief would impair his ability to "organize the voters in [his] count[y], to work with [his] preferred electoral candidates running for the Legislature in . . . [his] respective district[], and to engage in political activity designed to support [his] views and policy

positions.” *Id.* ¶ 23. Plaintiffs deposed Mr. Reid, and he is one of four witnesses whom Intervenor Defendants have indicated they may call to testify live at trial.

On April 16, 2019, Mr. Reid posted on Facebook that the Democratic Party is the “Modern Day Nazi Party.” Mot. to Exclude Ex. A. This Facebook post by Mr. Reid included an image of a swastika superimposed on a donkey (*i.e.*, the symbol of the Democratic Party), above the words “Socialism,” “Anti-America,” “Anti-Jews/Israel,” “Anti-2nd Amendment,” “Pro-Eugenics,” and “Pro-Hate.” *Id.* At his deposition, Mr. Reid confirmed that he posted this image to Facebook, and that he in fact believes that the Democratic Party is the “Modern Day Nazi Party.” Ex. A (Reid Dep. 44:21–23 (Q: “[Y]ou agree with the sentiments in this post?” A: “Yes.”)).

Less than a week earlier, on April 10, 2019, Mr. Reid had posted another image to Facebook of three flags: the Nazi flag, the flag of the former Soviet Union, and the rainbow flag of the LGBT rights movement. This Facebook post by Mr. Reid describes these images as “Flags of Totalitarian Ideologies.” Mot. to Exclude Ex. A. At his deposition, Mr. Reid testified that he created this post himself, and that he posted the image because he believes the LGBT rights movement is a totalitarian ideology akin to Nazism. Ex. A (Reid Dep. 48:6-51:25 (Q: “So why did you post this?” A: “Because it’s true. I think it speaks for itself.”)).¹

Intervenor Defendants now move to exclude Mr. Reid’s social media posts on the grounds that they are irrelevant or at least substantially more prejudicial than probative.

¹ On April 21, 2019, Mr. Reid also posted an image of Supreme Court Justice Ruth Bader Ginsburg. Mot. to Exclude Ex. A. Although this post also goes to Mr. Reid’s bias and credibility, Plaintiffs do not intend to use it as an exhibit at trial, and the Court therefore need not consider whether to exclude it.

ARGUMENT

As Plaintiffs explained in their motion *in limine* to exclude testimony from more than one Intervenor Defendant, the Court could exclude testimony by any Intervenor Defendants because it is irrelevant to Plaintiffs' legal claims—such testimony would have no “tendency to make the existence of any fact that is of consequence to the determination of th[is] action more probable or less probable.” N.C.G.S. § 8C-1, Rule 401. But if the Court does permit an Intervenor Defendant to testify and Mr. Reid takes the stand, there is no basis to exclude his social media posts. This evidence is directly relevant to the purported right and injury that Mr. Reid asserts, and also to his bias and credibility as a witness in this case.

I. Mr. Reid's Posts Are Directly Relevant to His Role as an Intervenor in this Case

Mr. Reid intervened in this case specifically on the basis of a purported right to have a Republican representative who “share[s] [his] *policy and political views*.” 1/29/19 Mot. to Intervene ¶ 2 (emphasis added). He claims that if his districts are redrawn, it will impair his ability to “engage in political activity designed to support [his] *views and policy positions*.” *Id.* ¶ 23 (emphasis added).

Mr. Reid therefore put his “policy and political views” squarely in issue in this case. As such, Mr. Reid's policy and political views, as reflected in his Facebook posts conveying those policy and political views are directly and highly relevant to this role here. Even more specifically, Mr. Reid's views of Democratic voters, as expressed in his Facebook posts, are directly relevant to the purported rights and injuries he asserts. Because Mr. Reid lives in districts “packed” with Democratic voters, these districts are more Democratic than they would be but-for the gerrymandering. Accordingly, if Plaintiffs prevail in this case, Mr. Reid's districts would likely become less Democratic-leaning and relatively more Republican-leaning. Mr.

Reid's views that the Democratic Party is the "Modern Day Nazi Party" are thus relevant to whether he would suffer an injury from living in districts with fewer Democrats.

II. The Facebook Posts Are Also Probative of Potential Bias

"[E]vidence of bias is logically relevant to a witness's credibility." *State v. Lewis*, 365 N.C. 488, 494, 724 S.E.2d 492, 497 (2012). The North Carolina Supreme Court has therefore held that a party "may cross-examine a witness regarding facts that have a logical tendency to show that the witness is biased against that party." *Id.*; *see also Carrier v. Starnes*, 120 N.C. App. 513, 518, 463 S.E.2d 393, 396 (1995) ("It is settled law that a party may address the bias of a witness offering substantive testimony."). The right to cross-examine an opposing witness for the purpose of showing bias "is a substantial legal right, which the trial judge can neither abrogate nor abridge to the prejudice of the cross-examining party." *Lewis*, 365 N.C. at 496, 724 S.E.2d at 498 (holding that failure to allow inquiry into evidence of bias was reversible error).

Mr. Reid's Facebook posts that the Democratic Party is the "Modern Day Nazi Party" and that the LGBT rights movement is a "totalitarian ideology" are probative of his bias toward Plaintiffs, which include the North Carolina Democrat Party and 37 individual Democratic voters. At a minimum, these posts have a "tendency" to show that Mr. Reid is biased against Democrats and is opposed to the relief that the North Carolina Democratic Party and the individual Democratic voters seek in this case. N.C.G.S. § 8C-1, Rule 401. This evidence of bias is "logically relevant to [Mr. Reid's] credibility," *Lewis*, 365 N.C. at 494, 724 S.E.2d at 497, because it has a tendency to suggest that his testimony may be influenced by his biases.

Intervenor Defendants motion *in limine* does not address the relevance of the Facebook posts to Mr. Reid's potential bias. Instead, Intervenor Defendants contend that the posts are irrelevant "because they do not reference redistricting." Mot. to Exclude at 2. But evidence is admissible if it has a tendency to make the existence of "any fact" of consequence more or less

probable; the evidence need not go directly to the ultimate issue. N.C.G.S. § 8C-1, Rule 401; *see also State v. Roper*, 328 N.C. 337, 356, 402 S.E.2d 600, 611 (1991) (“In order to be relevant, . . . evidence need not bear directly on the question in issue if it is helpful to understand the conduct of the parties, their motives, or if it reasonably allows the jury to draw an inference as to a disputed fact.”). And it is “settled law” that the potential bias of a testifying witness offering substantive testimony is always relevant. *Carrier*, 120 N.C. App. at 518, 463 S.E.2d at 396. Mr. Reid’s Facebook posts are admissible for this reason as well.

III. The Facebook Posts Are Also Probative of Mr. Reid’s Credibility

The Facebook posts independently go to Mr. Reid’s credibility. Like bias, the credibility of a witness is always relevant. *See* N.C.G.S. § 8C-1, Rule 611(b) (“A witness may be cross-examined on any matter relevant to any issue in the case, including credibility.”).

As noted, Mr. Reid sought to intervene in this suit on the ground that he believes he has a right to “representation by representatives who share [his] own policy and political views.” 1/29/19 Mot. to Intervene ¶ 2. But, as mentioned, the state House and Senate districts in which Mr. Reid lives are packed with Democratic voters. *See* Mot. to Intervene ¶ 7; Compl. ¶¶ 156, 177. In 2018, the Democratic candidate won Mr. Reid’s House District with 79.1% of the vote, and the Democratic candidate won his Senate District with 72.9% of the vote. If Plaintiffs prevail and the districts are “unpacked,” there will be fewer Democrats in Mr. Reid’s districts, making it less likely that he will have representatives who are Democrats.

Evidence that Mr. Reid believes that the Democratic Party is the “Modern Day Nazi Party” and that the LGBT rights movement is a “totalitarian ideology” undermines the credibility of his claim that he intervened in this suit to ensure representation by a representative who shares his views. If Mr. Reid is truly interested in ensuring a representative who shares his views, he should have intervened on behalf of Plaintiffs, not Defendants. This inconsistency is relevant.

Again, Intervenor Defendants' motion does not address the Facebook posts' relevance to Mr. Reid's credibility. For this reason, too, the posts are admissible.

IV. The Social Media Posts Are Not Unfairly Prejudicial

Intervenor Defendants alternatively seek to exclude Mr. Reid's Facebook posts expressing his political views on the ground that the danger of "unfair prejudice" substantially outweighs the posts' probative value. *See* N.C.G.S. § 8C-1, Rule 403. "Unfair prejudice" in this context means "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *State v. Chapman*, 359 N.C. 328, 348, 611 S.E.2d 794, 811 (2005) (quoting *State v. Cagle*, 346 N.C. 497, 506, 488 S.E.2d 535, 542 (1997)).

Mr. Reid's Facebook posts are not unfairly prejudicial—they have no tendency to suggest a decision on an emotional or otherwise improper basis. Indeed, Intervenor Defendants do not explain in their motion why they believe the posts are prejudicial at all. Evidence of Mr. Reid's political views cannot be unfairly prejudicial just because his views are detrimental to Intervenor Defendants' case. For purposes of Rule 403, "prejudice does not simply mean damage to the opponent's cause." *Ansell v. Green Acres Contracting Co.*, 347 F.3d 515, 525 (3d Cir. 2003) (alterations and internal quotation marks omitted). "The prejudice against which the law guards is unfair prejudice—prejudice of the sort which clouds impartial scrutiny and reasoned evaluation of the facts." *Id.* (alterations and internal quotations marks omitted). Mr. Reid's Facebook posts in which he expressed his own political cause could not cause any such unfair prejudice here. And even if they did, the prejudice would not "substantially" outweigh their probative value directly relating to his basis for intervening in the case, as well as the potential bias and credibility issues addressed above.

In any event, as Intervenor Defendants acknowledge in their separate motion *in limine* to exclude evidence of two criminal charges against Mr. Reid, the Court in this bench trial will be

“fully capable of weighing and appropriately disregarding the evidence as it is presented.” Mot. to Exclude Dismissed Criminal Charges 5 (citing *State v. Jones*, 789 S.E.2d 651, 656 (N.C. App. 2016)). Plaintiffs agree that the Court is fully capable of weighing this evidence appropriately and will not allow any unfair prejudice to affect its assessment of Mr. Reid’s testimony.

CONCLUSION

For the foregoing reasons, the Court should deny Intervenor Defendants’ motion to exclude social media evidence.

Respectfully submitted this the 1st day of July, 2019

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CERTIFICATE OF SERVICE

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This the 1st day of July, 2019.

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Exhibit A

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.)

DEPOSITION OF
REGINALD REID

10:22 A.M.

TUESDAY, MAY 7, 2019

SHANAHAN LAW GROUP
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RALEIGH, NORTH CAROLINA

BY: LISA A. WHEELER, RPR, CRR

1 A. Same thing.

2 Q. -- in relation to that? Have you ever run
3 for office?

4 A. Yes, I have.

5 Q. You ran for state Senate in 2012 --

6 A. Yes, sir.

7 Q. -- is that correct? And it was Senate --

8 A. Yes, sir.

9 Q. -- District 32; is that correct?

10 A. Yes, sir.

11 Q. And your opponent in that race was someone
12 named Earline Parmon --

13 A. Yes, sir.

14 Q. -- is that right? And Ms. Parlom -- mon --
15 I'm sorry. Ms. Parmon is also an
16 African-American; is that right?

17 A. Yes, sir. She was. She passed away in '15,
18 I believe.

19 Q. Who won that election?

20 A. She did. Ms. Parmon did.

21 Q. What percentage of the vote did you receive
22 and what percent did she receive?

23 A. High -- high -- high 20s I got, I believe.

24 Q. So if I told you Ms. Parmon won about 73
25 percent of the vote --

1 Q. And that's meant to refer to the Democratic
2 Party?

3 A. Yes, sir.

4 MR. BRANCH: Objection.

5 BY MR. JACOBSON:

6 Q. Sir, where did you get this image from?

7 MR. BRANCH: Objection.

8 A. Got it probably off of Facebook somewhere.

9 Q. Why did you post it?

10 A. Like I say, the modern Democratic Party
11 hasn't changed. They're still the same old
12 Klansmen in suits they've always been.
13 They're bigoted, hateful, in- --
14 infanticidal. All they see is people's skin
15 color. They judge the world by the -- the
16 Crayola box. They also -- I also -- I also
17 have a chance to put pro-gun. Origin of gun
18 control is to disarm African-Americans after
19 the Civil War. I could -- should also put
20 pro-gun control on that one.

21 Q. So you -- so you agree with the sentiments in
22 this post?

23 A. Yes.

24 MR. BRANCH: Objection.

25 BY MR. JACOBSON:

1 itself.

2 Q. And underneath the rainbow flag -- underneath
3 all three flags it says, quote, flags of
4 total- -- totalitarian ideologies, correct?

5 A. Yes, sir.

6 Q. So why did you post this?

7 A. Because it's true. I think it speaks for
8 itself.

9 Q. Why do you believe that homosexuality is a
10 totalitarian ideology akin to Naziism?

11 A. I didn't say --

12 MR. BRANCH: Objection.

13 A. I didn't say homosexuality was. I said the
14 movement was.

15 Q. Why do you believe that the LGBT movement is
16 a totalitarian ideology akin to Naziism?

17 A. Because if they can make you believe that the
18 winner of the 1976 men's decathlon is a
19 woman, they can make you believe anything.
20 That's straight up totalitarian propaganda.

21 Q. How is that totalitarian propaganda?

22 A. Really?

23 Q. Sir, how is that totalitarian propaganda?

24 A. The 1976 winner of the men's decathlon is a
25 woman. That doesn't --

1 Q. You have no further explanation of how that's
2 a totalitarian --

3 A. That doesn't make --

4 Q. -- ideology?

5 A. Some stuff --

6 THE REPORTER: One at a time.

7 THE WITNESS: Sorry.

8 A. I mean, I can't -- I don't know what to tell
9 you, man. Some stuff -- some stuff speaks
10 for itself. I don't --

11 Q. And you --

12 A. I don't know what to tell you.

13 Q. You believe that it's a totalitarian ideology
14 that's akin to Naziism and Communism; is that
15 right?

16 MR. BRANCH: Objection.

17 A. Yeah, it's to- -- yeah, I think it's
18 totalitarian ideology, absolutely. I think
19 the movement's -- I think the movement's
20 totalitarian.

21 Q. Do you believe it poses a -- a danger akin to
22 Naziism or Communism?

23 MR. BRANCH: Objection.

24 A. I think it's going to re- --

25 THE WITNESS: I have to answer that?

1 MR. BRANCH: (Nods head).

2 THE WITNESS: Okay.

3 A. I think it's -- I think it's in the process
4 of redefining this country and its culture,
5 redefining what it means to be a human being.

6 Q. How does it redefine what it means to be a
7 human being?

8 A. Human beings reproduce sexually and human
9 beings -- human beings have male/female
10 organs, XY chromosome, XX -- X chromosome.

11 Q. So -- so you're not disputing that your
12 belief is that homosex- -- sorry, the LGBT
13 movement is a totalitarian ideology that
14 poses a similar danger to Naziism and
15 Communism?

16 MR. BRANCH: Objection.

17 A. And there was a book published in the early
18 '90s called the -- The Pink Swastika.

19 Q. Just to clarify, Mr. Reid, are you disputing
20 that homosex- -- the LGBT movement is a
21 totalitarian ideology that --

22 A. I'm not dispute -- I'm not disputing that at
23 all.

24 MR. BRANCH: You've got -- Reggie, hold
25 on. Take a deep breath. You got to let him

1 finish his question --

2 THE WITNESS: Okay.

3 MR. BRANCH: -- before you testify. I
4 mean, you...

5 BY MR. JACOBSON:

6 Q. Are you dis- -- are you disputing that you
7 believe that total- -- that hom- -- that the
8 LGBT movement is a totalitarian ideology that
9 poses a similar danger as Naziism?

10 MR. BRANCH: Objection.

11 BY MR. JACOBSON:

12 Q. You may answer.

13 MR. BRANCH: I mean, you can answer the
14 question.

15 THE WITNESS: Okay.

16 A. Yeah. I -- like I say, I'm not disputing
17 that, no, sir.

18 Q. Okay.

19 A. I think it's totalitarian ideology like the
20 flag says.

21 Q. And you stand by this post?

22 A. I do.

23 Q. Is there anything else you want to tell me
24 about your beliefs about the LGBT movement?

25 A. No, sir.

1 Q. Does the number of Republican voters in your
2 district affect your decision of whether to
3 run for office again?

4 MR. BRANCH: Objection.

5 A. I ran for state House and the state Senate in
6 2012 and 2016 -- or 2018. You saw the
7 numbers. Do you think that will really make
8 a difference if I ran for office again?

9 Q. Would you prefer it if you're running for
10 office if you -- there were more voters in
11 your district who are registered with your
12 party?

13 A. Like I say, you --

14 MR. BRANCH: Objection.

15 A. -- you've -- you've got my background, man.
16 You know what the situation is.

17 Q. I'm just asking, what's your preference?

18 A. Do you -- you know -- you know my background.
19 You know I don't have -- you know, it's not
20 going to determine whether I run for office
21 or not. You know, that's not going to
22 determine whether I run for office or not.

23 Q. Would it help you win?

24 MR. BRANCH: Objection.

25 A. Not necessarily. As I said previously, there