

# **Exhibit 2**

## Alyssa Riggins

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**From:** Callahan, Sam <Sam.Callahan@arnoldporter.com>  
**Sent:** Wednesday, December 22, 2021 10:27 AM  
**To:** Phil Strach; 'McKnight, Katherine L.'; Alyssa Riggins; 'Feldman, Stephen'; Tom Farr; John Branch; Braden, E. Mark; Raile, Richard; 'Brennan, Stephanie'; 'Majmundar, Amar'; 'tsteed@ncdoj.gov'; 'Burton Craige'; 'Narendra Ghosh'; 'Paul Smith'; 'melias@elias.law'; 'abranche@elias.law'; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; akhanna@elias.law; Jones, Stanton; Theodore, Elisabeth; Cella, John; 'Doerr, Adam'; 'Zimmerman, Erik'; 'Hirsch, Sam'; 'Amunson, Jessica Ring'; 'Kali Bracey'; 'Schauf, Zachary C.'; 'Mittal, Urja R.'; Hilary Harris Klein; Allison Riggs; Talia Ray; Chris Shenton; Noor Taj; Molodanof, Olivia; Boer, Tom  
**Subject:** RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

Phil: While we certainly wish to avoid unnecessary motions practice, we believe it's important to establish a clear record regarding the invocation of legislative privilege and to tee up the sword/shield issue for resolution by the Court. Accordingly, similar to what occurred in the 2019 *Common Cause* case, we believe you should seek a protective order based on legislative privilege. Also similar to the 2019 litigation, we will not oppose entry of a protective order subject to our position that a party cannot invoke legislative privilege to block discovery and then offer the testimony of a legislator who invoked privilege or others at trial regarding matters that were shielded from discovery. In the meantime, pending resolution of the motion for protective order, we would agree not to proceed with the depositions of the legislators who have invoked legislative privilege; only Rep. Hall's and Sen. Hise's depositions will go forward.

Best,  
Sam

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**From:** Phil Strach <phil.strach@nelsonmullins.com>  
**Sent:** Tuesday, December 21, 2021 7:05 PM  
**To:** Callahan, Sam <Sam.Callahan@arnoldporter.com>; 'McKnight, Katherine L.' <kmcknight@bakerlaw.com>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; 'Feldman, Stephen' <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; John Branch <john.branch@nelsonmullins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; 'Brennan, Stephanie' <Sbrennan@ncdoj.gov>; 'Majmundar, Amar' <amajmundar@ncdoj.gov>; 'tsteed@ncdoj.gov' <tsteed@ncdoj.gov>; 'Burton Craige' <bcraige@pathlaw.com>; 'Narendra Ghosh' <nghosh@pathlaw.com>; 'Paul Smith' <psmith@pathlaw.com>; 'melias@elias.law' <melias@elias.law>; 'abranche@elias.law' <abranche@elias.law>; zzz.External.Imadduri@elias.law <Imadduri@elias.law>; zzz.External.jshelly@elias.law <jshelly@elias.law>; zzz.External.gwhite@elias.law <gwhite@elias.law>; zzz.External.akhanna@elias.law <akhanna@elias.law>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Cella, John <John.Cella@arnoldporter.com>; 'Doerr, Adam' <ADoerr@robinsonbradshaw.com>; 'Zimmerman, Erik' <EZimmerman@robinsonbradshaw.com>; 'Hirsch, Sam' <SHirsch@jenner.com>; 'Amunson, Jessica Ring' <JAmunson@jenner.com>; 'Kali Bracey' <KBracey@jenner.com>; 'Schauf, Zachary C.' <ZSchauf@jenner.com>; 'Mittal, Urja R.' <UMittal@jenner.com>; Hilary Harris Klein <hilaryhklein@scsj.org>; Allison Riggs <AllisonRiggs@southerncoalition.org>; Talia Ray <taliaray@scsj.org>; Chris Shenton <chrisshenton@scsj.org>; Noor Taj <noor@scsj.org>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>  
**Subject:** RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

External E-mail

Sam,

We are not aware of a procedure under the NC Rules of Civil Procedure to file a formal objection to a deposition notice to a party. We are only aware of the option of filing a motion for a protective order under Rule 26, N.C.R. Civ. P. We are certainly willing to file such a motion but don't think it would be in anyone's interest to seek judicial intervention based on the parties' current positions. If you are aware of another option to object, please let me know. Otherwise, please let me know if we will need to file a motion for protective order.

Thanks.

Phil



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**From:** Callahan, Sam <[Sam.Callahan@arnoldporter.com](mailto:Sam.Callahan@arnoldporter.com)>

**Sent:** Tuesday, December 21, 2021 3:56 PM

**To:** Phil Strach <[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)>; 'McKnight, Katherine L.' <[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)>; Alyssa Riggins <[alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)>; 'Feldman, Stephen' <[SFeldman@robinsonbradshaw.com](mailto:SFeldman@robinsonbradshaw.com)>; Tom Farr <[tom.farr@nelsonmullins.com](mailto:tom.farr@nelsonmullins.com)>; John Branch <[john.branch@nelsonmullins.com](mailto:john.branch@nelsonmullins.com)>; Braden, E. Mark <[MBraden@bakerlaw.com](mailto:MBraden@bakerlaw.com)>; Raile, Richard <[rraile@bakerlaw.com](mailto:rraile@bakerlaw.com)>; 'Brennan, Stephanie' <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>; 'Majmundar, Amar' <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; 'tsteed@ncdoj.gov' <[tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)>; 'Burton Craige' <[bcraige@pathlaw.com](mailto:bcraige@pathlaw.com)>; 'Narendra Ghosh' <[nghosh@pathlaw.com](mailto:nghosh@pathlaw.com)>; 'Paul Smith' <[psmith@pathlaw.com](mailto:psmith@pathlaw.com)>; 'melias@elias.law' <[melias@elias.law](mailto:melias@elias.law)>; 'abranh@elias.law' <[abranh@elias.law](mailto:abranh@elias.law)>; [lmadduri@elias.law](mailto:lmadduri@elias.law); [jshelly@elias.law](mailto:jshelly@elias.law); [gwhite@elias.law](mailto:gwhite@elias.law); [akhanna@elias.law](mailto:akhanna@elias.law); Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Cella, John <[John.Cella@arnoldporter.com](mailto:John.Cella@arnoldporter.com)>; 'Doerr, Adam' <[ADoerr@robinsonbradshaw.com](mailto:ADoerr@robinsonbradshaw.com)>; 'Zimmerman, Erik' <[EZimmerman@robinsonbradshaw.com](mailto:EZimmerman@robinsonbradshaw.com)>; 'Hirsch, Sam' <[SHirsch@jenner.com](mailto:SHirsch@jenner.com)>; 'Amunson, Jessica Ring' <[JAmunson@jenner.com](mailto:JAmunson@jenner.com)>; 'Kali Bracey' <[KBracey@jenner.com](mailto:KBracey@jenner.com)>; 'Schauf, Zachary C.' <[ZSchauf@jenner.com](mailto:ZSchauf@jenner.com)>; 'Mittal, Urja R.' <[UMittal@jenner.com](mailto:UMittal@jenner.com)>; Hilary Harris Klein <[hilaryhklein@scsj.org](mailto:hilaryhklein@scsj.org)>; Allison Riggs <[AllisonRiggs@southerncoalition.org](mailto:AllisonRiggs@southerncoalition.org)>; Talia Ray <[taliaray@scsj.org](mailto:taliaray@scsj.org)>; Chris Shenton <[chrisshenton@scsj.org](mailto:chrisshenton@scsj.org)>; Noor Taj <[noor@scsj.org](mailto:noor@scsj.org)>; Molodanof, Olivia <[olivia.molodanof@hoganlovells.com](mailto:olivia.molodanof@hoganlovells.com)>; Boer, Tom <[tom.boer@hoganlovells.com](mailto:tom.boer@hoganlovells.com)>

**Subject:** RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

Phil (and adding counsel for Common Cause),

We were simply quoting from the 2019 *Common Cause* order, which makes clear that after invoking privilege as to one legislator, a party cannot introduce related testimony from another legislator. In any event, since as you say that is likely an issue that we will need to take to the court, in the meantime we will go forward with depositions of Sen. Hise and Rep. Hall, without waiver of our right to move to preclude their trial testimony based on the sword/shield doctrine or any other appropriate reason. We don't believe that Sen. Hise and Rep. Hall can waive privilege while refusing to answer questions that "impinge on another legislator's privilege," but we can see whether such an issue comes up at the depositions. Could you provide availability on Dec. 27 or Dec. 28?

As to the deposition notices for the four legislators who are invoking legislative privilege, we don't intend to withdraw them. We think the proper course would be for you to serve a formal objection on the basis of legislative privilege. If you serve such an objection, we do not intend to move to compel their testimony and we can go forward on the understanding that their depositions will not proceed.

Best,  
Sam

---

**From:** Phil Strach <[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)>

**Sent:** Tuesday, December 21, 2021 10:50 AM

**To:** Callahan, Sam <[Sam.Callahan@arnoldporter.com](mailto:Sam.Callahan@arnoldporter.com)>; 'McKnight, Katherine L.' <[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)>; Alyssa Riggins <[alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)>; 'Feldman, Stephen' <[SFeldman@robinsonbradshaw.com](mailto:SFeldman@robinsonbradshaw.com)>; Tom Farr <[tom.farr@nelsonmullins.com](mailto:tom.farr@nelsonmullins.com)>; John Branch <[john.branch@nelsonmullins.com](mailto:john.branch@nelsonmullins.com)>; Braden, E. Mark <[MBraden@bakerlaw.com](mailto:MBraden@bakerlaw.com)>; Raile, Richard <[rraile@bakerlaw.com](mailto:rraile@bakerlaw.com)>; 'Brennan, Stephanie' <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>; 'Majmundar, Amar' <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; 'tsteed@ncdoj.gov' <[tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)>; 'Burton Craige' <[bcraige@pathlaw.com](mailto:bcraige@pathlaw.com)>; 'Narendra Ghosh' <[nghosh@pathlaw.com](mailto:nghosh@pathlaw.com)>; 'Paul Smith' <[psmith@pathlaw.com](mailto:psmith@pathlaw.com)>; 'melias@elias.law' <[melias@elias.law](mailto:melias@elias.law)>; 'abranh@elias.law' <[abranh@elias.law](mailto:abranh@elias.law)>; [zzz.External.lmadduri@elias.law](mailto:zzz.External.lmadduri@elias.law) <[zzz.External.lmadduri@elias.law](mailto:zzz.External.lmadduri@elias.law)>; [zzz.External.jshelly@elias.law](mailto:zzz.External.jshelly@elias.law) <[zzz.External.jshelly@elias.law](mailto:zzz.External.jshelly@elias.law)>; [zzz.External.gwhite@elias.law](mailto:zzz.External.gwhite@elias.law) <[zzz.External.gwhite@elias.law](mailto:zzz.External.gwhite@elias.law)>; [zzz.External.akhanna@elias.law](mailto:zzz.External.akhanna@elias.law) <[zzz.External.akhanna@elias.law](mailto:zzz.External.akhanna@elias.law)>; Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; 'Doerr, Adam' <[ADoerr@robinsonbradshaw.com](mailto:ADoerr@robinsonbradshaw.com)>; 'Zimmerman, Erik' <[EZimmerman@robinsonbradshaw.com](mailto:EZimmerman@robinsonbradshaw.com)>; 'Hirsch, Sam' <[SHirsch@jenner.com](mailto:SHirsch@jenner.com)>; 'Amunson, Jessica Ring' <[JAmunson@jenner.com](mailto:JAmunson@jenner.com)>; 'Kali Bracey' <[KBracey@jenner.com](mailto:KBracey@jenner.com)>; 'Schauf, Zachary C.' <[ZSchauf@jenner.com](mailto:ZSchauf@jenner.com)>; 'Mittal, Urja R.' <[UMittal@jenner.com](mailto:UMittal@jenner.com)>

**Subject:** RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

External E-mail

Sam:

We do not read the 2019 *Common Cause* order the way you described it below and of course it is not binding in this case. We do not believe Rep. Hall or Sen. Hise will be using the privilege as a sword in any way. If you disagree, the Court will be in the best position to address your concerns on any specific testimony at trial. Regarding your second question, Rep. Hall and Sen. Hise are not asserting a "partial" waiver of legislative privilege; they are testifying both at any deposition and at trial. However, if they are asked questions that would impinge on another legislator's privilege, or involve areas outside of redistricting, then they reserve the right to make an appropriate objection at the time.

Please confirm today that plaintiffs are withdrawing the other notices so that we can avoid motions practice as to them.

Regards,

Phil



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**From:** Callahan, Sam <[Sam.Callahan@arnoldporter.com](mailto:Sam.Callahan@arnoldporter.com)>

**Sent:** Monday, December 20, 2021 4:59 PM

**To:** Phil Strach <[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)>; 'McKnight, Katherine L.' <[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)>; Alyssa Riggins <[alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)>; 'Feldman, Stephen' <[SFeldman@robinsonbradshaw.com](mailto:SFeldman@robinsonbradshaw.com)>; Tom Farr <[tom.farr@nelsonmullins.com](mailto:tom.farr@nelsonmullins.com)>; John Branch <[john.branch@nelsonmullins.com](mailto:john.branch@nelsonmullins.com)>; Braden, E. Mark <[MBraden@bakerlaw.com](mailto:MBraden@bakerlaw.com)>; Raile, Richard <[rraile@bakerlaw.com](mailto:rraile@bakerlaw.com)>; 'Brennan, Stephanie' <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>; 'Majmundar, Amar' <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; 'tsteed@ncdoj.gov' <[tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)>; 'Burton Craige' <[bcraige@pathlaw.com](mailto:bcraige@pathlaw.com)>; 'Narendra Ghosh' <[nghosh@pathlaw.com](mailto:nghosh@pathlaw.com)>; 'Paul Smith' <[psmith@pathlaw.com](mailto:psmith@pathlaw.com)>; 'melias@elias.law' <[melias@elias.law](mailto:melias@elias.law)>; 'abranche@elias.law' <[abranche@elias.law](mailto:abranche@elias.law)>; [lmadduri@elias.law](mailto:lmadduri@elias.law); [jshelly@elias.law](mailto:jshelly@elias.law); [gwhite@elias.law](mailto:gwhite@elias.law); [akhanna@elias.law](mailto:akhanna@elias.law); Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; 'Doerr, Adam' <[ADoerr@robinsonbradshaw.com](mailto:ADoerr@robinsonbradshaw.com)>; 'Zimmerman, Erik' <[EZimmerman@robinsonbradshaw.com](mailto:EZimmerman@robinsonbradshaw.com)>; 'Hirsch, Sam' <[SHirsch@jenner.com](mailto:SHirsch@jenner.com)>; 'Amunson, Jessica Ring' <[JAmunson@jenner.com](mailto:JAmunson@jenner.com)>; 'Kali Bracey' <[KBracey@jenner.com](mailto:KBracey@jenner.com)>; 'Schauf, Zachary C.' <[ZSchauf@jenner.com](mailto:ZSchauf@jenner.com)>; 'Mittal, Urja R.' <[UMittal@jenner.com](mailto:UMittal@jenner.com)>

**Subject:** RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

Phil: Thank you for your response. We have two questions about your proposal.

First, in light of your assertion of legislative privilege as to Speaker Moore, and Sens. Berger, Daniel, and Newton, we assume that you will (1) not try to introduce their testimony at trial, or any “evidence or testimony that derives directly or indirectly from non-public information provided by, or non-public communications with,” those legislators; and (2) will not introduce “evidence or testimony” from any witness, including Rep. Hall or Sen. Hise, “that otherwise seeks to explain the General Assembly’s intent in drawing the challenged district plans, unless such testimony or evidence is based exclusively on the public legislative record or publicly available data.” See 7/7/2019 Order in *Common Cause* at 5. As you’ll recall, after Legislative Defendants asserted privilege in *Common Cause*, the court entered an order forbidding such testimony in evidence in light of North Carolina precedent establishing that parties cannot use a privilege as a shield to prevent testimony while at the same time selectively offering other evidence of their choice that relates to the privileged information. It wouldn’t be fair for you to present evidence relating to legislative intent with respect to particular districts or the map as a whole when we have been prevented from taking testimony from some of the key players who participated in the mapdrawing process. Can you confirm that in light of your invocation of legislative privilege you agree that you won’t introduce any evidence or testimony from any witness in those categories, including testimony from Rep. Hall and Sen. Hise that seeks to explain the legislative intent?

Second, as to Rep. Hall and Sen. Hise, could you prove more clarity on your proposal? Parties can’t engage in a “partial” waiver of legislative privilege. We can’t agree to a situation in which Rep. Hall and Sen. Hise would “waive” legislative privilege “as it pertains to being deposed” while still retaining the right to assert legislative privilege in response to specific deposition questions about the 2021 plans that they prefer not to answer. Relatedly, are you suggesting that Rep. Hall and Sen. Hise might answer certain questions at their deposition but then re-assert legislative privilege at trial?

We would appreciate if you could provide any response by noon tomorrow, December 21.

Thanks,  
Sam

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**From:** Phil Strach <[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)>

**Sent:** Monday, December 20, 2021 12:28 PM

**To:** Callahan, Sam <[Sam.Callahan@arnoldporter.com](mailto:Sam.Callahan@arnoldporter.com)>; 'McKnight, Katherine L.' <[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)>; Alyssa Riggins <[alyssa.riggins@nelsonmullins.com](mailto:alyssa.riggins@nelsonmullins.com)>; 'Feldman, Stephen' <[SFeldman@robinsonbradshaw.com](mailto:SFeldman@robinsonbradshaw.com)>; Tom Farr

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**Subject:** RE: NCLCV v Hall (21 CVS 15426) -- deposition notices

External E-mail

Sam,

Thanks for sending these notices. Please be advised that Speaker Moore, and Sens. Berger, Daniel, and Newton intend to assert legislative privilege and will not be testifying in this matter. Representative Hall and Senator Hise have agreed to waive legislative privilege as it pertains to being deposed (they may assert legislative privilege as it relates to specific questions at the depositions or at trial). Under North Carolina law legislative privilege clearly precludes a deposition or trial testimony of these legislators as it relates to the challenged redistricting plans. Please let us know by 10am tomorrow, Tuesday, December 21, whether plaintiffs will be withdrawing the deposition notices as to Speaker Moore, and Sens. Berger, Daniel, and Newton.

Thanks.

Phil



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PHILLIP J. STRACH PARTNER

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**From:** Callahan, Sam <[Sam.Callahan@arnoldporter.com](mailto:Sam.Callahan@arnoldporter.com)>

**Sent:** Tuesday, December 14, 2021 7:39 PM

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**Subject:** NCLCV v Hall (21 CVS 15426) -- deposition notices

◀**External Email**▶ - From: [prvs=976b056c8=Sam.Callahan@arnoldporter.com](mailto:prvs=976b056c8=Sam.Callahan@arnoldporter.com)

Counsel: I've attached the *Harper* Plaintiffs' notices of depositions for the six Legislative Defendants.

Thank you,  
Sam

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