

STATE OF NORTH CAROLINA

File No.

18 CVS 014001

WAKE County

In The General Court Of Justice
District Superior Court Division

COMMON CAUSE et al.,

Additional File Numbers

VERSUS

SUBPOENA

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

G.S. 1A-1, Rule 45; 8-59, -61, -63; 15A-801, -802

Party Requesting Subpoena

State/Plaintiff Defendant

NOTE TO PARTIES NOT REPRESENTED BY COUNSEL: Subpoenas may be produced at your request, but must be signed and issued by the office of the Clerk of Superior Court, or by a magistrate or judge.

Name And Address Of Person Subpoenaed

Kathleen H. Hofeller
2427 Springmoor Circle

Alternate Address

Raleigh NC 27615

Telephone No.

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

- appear and testify, in the above entitled action, before the court at the place, date and time indicated below.
appear and testify, in the above entitled action, at a deposition at the place, date and time indicated below.
produce and permit inspection and copying of the following items, at the place, date and time indicated below.
See attached list. (List here if space sufficient)

Name And Location Of Court/Place Of Deposition/Place To Produce

Edwin M. Speas, Jr. and Caroline P. Mackie
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh NC 27601

Date To Appear/Produce, Until Released

02/01/2019

Time To Appear/Produce, Until Released

9:00

AM PM

Date

1/15/2019

Name And Address Of Applicant Or Applicant's Attorney

Edwin M. Speas, Jr. and Caroline P. Mackie
Poyner Spruill LLP
P.O. Box 1801
Raleigh NC 27602-1801

Signature

Caroline P. Mackie

- Deputy CSC Assistant CSC Clerk Of Superior Court
Magistrate Attorney/DA District Court Judge
Superior Court Judge

Telephone No. Of Applicant Or Applicant's Attorney
919-783-6400

RETURN OF SERVICE

I certify this subpoena was received and served on the person subpoenaed as follows:

- personal delivery. registered or certified mail, receipt requested and attached.
telephone communication by Sheriff (use only for a witness subpoenaed to appear and testify).
telephone communication by local law enforcement agency (use only for a witness subpoenaed to appear and testify in a criminal case).

NOTE TO COURT: If the witness was served by telephone communication from a local law enforcement agency in a criminal case, the court may not issue a show cause order or order for arrest against the witness until the witness has been served personally with the written subpoena.

I was unable to serve this subpoena. Reason unable to serve:

Service Fee Paid Due Date Served Name Of Authorized Server (type or print) Signature Of Authorized Server Title/Agency

NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

AOC-G-100, Rev. 2/18

(Please see reverse side)

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Legislative Defendants Trial

Ex.062



NOTE: Rule 45, North Carolina Rules of Civil Procedure, Subsections (c) and (d).

(c) Protection of Persons Subject to Subpoena

(1) **Avoid undue burden or expense.** - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.

(2) **For production of public records or hospital medical records.** - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.

(3) **Written objection to subpoenas.** - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:

- a. The subpoena fails to allow reasonable time for compliance.
- b. The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
- c. The subpoena subjects a person to an undue burden or expense.
- d. The subpoena is otherwise unreasonable or oppressive.
- e. The subpoena is procedurally defective.

(4) **Order of court required to override objection.** - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.

(5) **Motion to quash or modify subpoena.** - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

(6) **Order to compel; expenses to comply with subpoena.** - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.

(7) **Trade secrets; confidential information.** - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.

(8) **Order to quash; expenses.** - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoena

(1) **Form of response.** - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things 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 request.

(2) **Form of producing electronically stored information not specified.** - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.

(3) **Electronically stored information in only one form.** - The person responding need not produce the same electronically stored information in more than one form.

(4) **Inaccessible electronically stored information.** - The person responding 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 for a protective order, the person responding must show that the information 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, after considering the limitations of Rule 28(b)(1a). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.

(5) **Specificity of objection.** - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

NOTE: If you have any questions about being subpoenaed as a witness, you should contact the person named on Page One of this Subpoena in the box labeled "Name And Address Of Applicant Or Applicant's Attorney."

DUTIES OF A WITNESS

- Unless otherwise directed by the presiding judge, you must answer all questions asked when you are on the stand giving testimony.
- In answering questions, speak clearly and loudly enough to be heard.
- Your answers to questions must be truthful.
- If you are commanded to produce any items, you must bring them with you to court or to the deposition.
- You must continue to attend court until released by the court. You must continue to attend a deposition until the deposition is completed.

BRIBING OR THREATENING A WITNESS

It is a violation of State law for anyone to attempt to bribe, threaten, harass, or intimidate a witness. If anyone attempts to do any of these things concerning your involvement as a witness in a case, you should promptly report that to the district attorney or the presiding judge.

WITNESS FEE

A witness under subpoena and that appears in court to testify, is entitled to a small daily fee, and to travel expense reimbursement, if it is necessary to travel outside the county in order to testify. (The fee for an "expert witness" will be set by the presiding judge.) After you have been discharged as a witness, if you desire to collect the statutory fee, you should immediately contact the Clerk's office and certify your attendance as a witness so that you will be paid any amount due you.

**ATTACHMENT TO JANUARY 15, 2019 SUBPOENA TO KATHLEEN H. HOFELLER
AND THE ESTATE OF THOMAS HOFELLER**

DEFINITIONS

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

1. The term “document,” whether singular or plural, is used herein in the broadest sense of the term and means each and every writing of whatever nature, and shall mean the original and any draft or copy that differs in any way from the original of any written or graphic matter, however produced or reproduced, and shall mean, without limitation, each and every tangible thing from which information can be processed or transcribed from disk, diskette, compact disc, tape or some other electronic media or data computations. The term includes, but it is not limited to, letters, electronic mail (“email”)¹ and any attachments, messages, facsimile transmissions, telegrams, memoranda, telex messages, reports, books, agreements, correspondence, contracts, financial statements, instruments, ledgers, journals, accountings, minutes of meetings, payrolls, studies, calendar and diary entries, notes, charts, schedules, tabulations, maps, work papers, brochures, evaluations, memoranda of telephone conversations, audio and video tape recordings, internal communications, bills, tapes, computer printouts, drawings, designs, diagrams, exhibits, photographs, reproductions, any marginal comments appearing on any document and copies of documents which are not identical duplicates of the originals (e.g., because handwritten or “blind copy” notes or notations appear thereon or are attached thereto). The term “document(s)” includes the defined term “Electronically-Stored Information,” which is defined below. The term “document” specifically seeks the production of Electronically-Stored Information in native format.

2. The term “Electronically-Stored Information” or “ESI” shall mean any and all electronic data or information stored on a computing device. Information and data is considered “electronic” if it exists in a medium that can only be read through the use of computing device. This term includes but is not limited to databases; all text file and word-processing documents (including metadata); presentation documents; spreadsheets; graphics, animations, and images (including but not limited to “JPG, GIF, BMP, PDF, PPT, and TIFF files); email, email strings, and instant messages (including attachments, logs of email history and usage, header information and “deleted” files); email attachments; calendar and scheduling information; cache memory; Internet history files and preferences; audio; video, and audiovisual recordings; voicemail stored on databases; networks; computers and computer systems; computer system activity logs; servers; archives; back-up or disaster recovery systems; hard drives; discs; CD’s; diskettes; removable drives; tapes; cartridges and other storage media; printers; scanners; personal digital assistants; computer calendars; handheld wireless devices; cellular telephones; pagers; fax machines; and voicemail systems. This term includes but is not limited to on-

¹ One email address used by Dr. Hofeller at relevant times was celticheal@aol.com. This subpoena covers responsive emails at that email address and any other email addressed used by Dr. Hofeller at relevant times.

screen information, system data, archival data, legacy data, residual data, and metadata that may not be readily viewable or accessible, and all file fragments and backup files.

3. This Subpoena further requests the forensic copying and examination of ESI, as well as for the production of ESI. The purpose of obtaining ESI from you is to obtain all meta-data, 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. You are encouraged to comply reasonably and to confer immediately with the undersigned counsel for an agreement on each party's respective rights and responsibilities.
4. The term "redistricting," if not otherwise qualified, shall be construed to mean the redistricting of the North Carolina State Senate and State House districts in 2011 and 2017.

LIST OF DOCUMENTS AND THINGS TO BE PRODUCED
PURSUANT TO THIS SUBPOENA

1. All documents of, created by, or held by Thomas Hofeller in your possession, custody, or control relating to or concerning the redistricting of the North Carolina State Senate and State House in 2011 or 2017, including but not limited to, all correspondence, reports, notes, memos, data, electronic files, maps, charts, and/or graphs relating to or concerning the redistricting of the North Carolina State Senate and State House in 2011 or 2017.
2. All documents, notes, or correspondence reflecting any instructions, criteria, or requests of members of the North Carolina General Assembly regarding the redistricting of the North Carolina State Senate and State House in 2011 or 2017.
3. All documents, notes, or correspondence containing, relating to, or evidencing the first version and each subsequent version of any redistricting maps and/or proposed redistricting maps, or any parts thereof, prepared by or consulted by Thomas Hofeller for purposes of the redistricting of the North Carolina State Senate or State House in 2011 or 2017, as well as any information (including but not limited to ESI) evidencing the date on which such maps (or parts thereof) were created and/or modified.
4. Any storage device in your possession, custody, or control that contains, or may contain: (1) any and all ESI requested in the preceding paragraphs; (2) and/or any ESI relating to any documents requested in the preceding paragraphs.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email and by U.S. mail*, 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
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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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Counsel for the Legislative Defendants

This the 15th day of January, 2019.

Caroline P. Mackie
Caroline P. Mackie