

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399**

SANDRA LITTLE COVINGTON, *et al.*,)
)
Plaintiffs,)
)
v.)
)
THE STATE OF NORTH CAROLINA,)
et al.,)
)
Defendants.)

**MEMORANDUM IN SUPPORT
OF DEFENDANTS' MOTION
FOR LEAVE TO DEPOSE
COUNSEL FOR PLAINTIFFS**

Defendants submit this Memorandum of Law in support of their Motion for Leave to Depose Counsel for Plaintiffs. In support of their Motion, Defendants show the Court as follows.

INTRODUCTION

Four essentially identical lawsuits have been filed against the State of North Carolina challenging redistricting plans enacted by the North Carolina General Assembly in 2011. These cases include: (1) *Dickson v. Rucho*, No. 11-CVS-16896 (Wake County Superior Court); (2) *NC NAACP v. State of North Carolina*, No. 11-CVS-16940 (Wake County Superior Court); (3) *Harris v. McCrory*, No. 1:13-CV-949 (M.D.N.C.); and (4) *Covington v. The State of North Carolina*, No. 1:15-CV-00399 (M.D.N.C.). The two federal cases were filed only after the plaintiffs in the state cases lost their cases at the North Carolina Superior Court level.

The plaintiffs in *Dickson* and *Harris*, like the Plaintiffs in the instant case, were represented by the law firm of Poyner and Spruill, LLP. The plaintiffs in *NC NAACP*

were represented by the Southern Coalition for Justice (“SCSJ”) who is also representing the Plaintiffs in the instant case. Like the present litigation, the *Dickson*, *NC NAACP*, and *Harris* cases challenged as alleged racial gerrymanders nearly identical congressional and legislative districts. *Dickson* and *NC NAACP* were consolidated for trial (the “consolidated state cases” or “*Dickson*”) and judgment was entered, and ultimately affirmed on appeal, on all claims for Defendants. Defendants in this case seek discovery on who paid fees charged by Poyner and Spruill and the SCSJ in the instant case and in the previous redistricting cases where they were counsel of record for the plaintiffs. (See Exhibit 1, Plaintiffs’ First Supplemental Responses to Defendants’ First Set of Interrogatories)

Defendants seek such information to determine the extent of any privity between the plaintiffs in the state court cases and the plaintiffs in the subsequent federal cases in support of their defense that the instant Plaintiffs’ claims are barred by the doctrines of *res judicata* and collateral estoppel. (See D.E. 14, Defendants’ Answer, Second and Third Defenses); *see also Ashton v. City of Concord*, 337 F. Supp. 2d 735, 741 (M.D.N.C. 2004) (“Under North Carolina law, a previous judgment will preclude a subsequent action if the first decision was a final judgment on the merits, involving the same parties or parties in privity with them, and the same cause of action”). However, Plaintiffs have refused to answer interrogatories seeking this information and they have failed to identify any party which can provide the requested information at a deposition. (See Exhibit 1)

Having exhausted traditional discovery methods and seeking the information from other sources, Defendants respectfully seek leave from the Court to depose Plaintiffs’

counsel on the narrow issues of who financed and controlled the litigation in *Dickson*, *Harris*, and in the present case. Permitting these depositions is the only way by which Defendants can obtain this information which is vital to their defense of this case. The people of the State of North Carolina and their elected representatives, and in fact any litigant, is entitled to know the identity of those who control a lawsuit that has been brought against them, especially where the litigant is forced to defend numerous lawsuits in succession over identical legal issues.

STATEMENT OF FACTS

The *Dickson* and *NC NAACP* cases both challenged several congressional districts enacted in 2011 (including the First and the Twelfth) as racial gerrymanders. These cases also challenged almost all of the legislative districts challenged in the instant case as racial gerrymanders. The *Dickson* and *NC NAACP* cases were later consolidated for trial. Judgment was entered on all claims for the defendants. Plaintiffs, represented by Poyner and Spruill and the SCSJ, appealed and the judgment was affirmed by the North Carolina Supreme Court. Plaintiffs filed a petition for *certiorari* with the United States Supreme Court. The United States Supreme Court granted *certiorari* and remanded the case for reconsideration by the North Carolina Supreme Court in light of its decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015). Following a second oral argument, the North Carolina Supreme Court reaffirmed the judgment of the trial court for a second time. *Dickson v. Rucho*, ___ S.E. 2d ___, 2015 WL 9261836 (N.C. Dec. 18, 2015).

After the *Dickson* plaintiffs lost the state court case, two new plaintiffs represented by Poyner and Spruill filed the *Harris* case. There, plaintiffs—like the *Dickson* plaintiffs—challenged the First and Twelfth Congressional Districts as racial gerrymanders. Neither plaintiff in *Harris* had read the complaint before it was filed or was responsible for paying their own legal fees. (See D.E. 52-2 and 52-3, Deposition Excerpts of *Harris* plaintiffs Christine Bowser and David Harris). Both plaintiffs were solicited to be plaintiffs by affiliated organizations of the North Carolina Democratic Party. (*Id.*) This case was tried in October 2015 and on February 5, 2016 the court rendered its decision in favor of the *Harris* plaintiffs. See *Harris v. McCrory*, __ F. Supp. 3d __, 2016 WL 482052 (M.D.N.C. Feb. 5, 2016). Defendants have filed a notice of appeal of this decision.

Similarly, after definitively losing their claims related to legislative districts in the *Dickson* litigation, Poyner and Spruill and the SCSJ are counsel for the Plaintiffs in the instant litigation asserting nearly identical claims they unsuccessfully argued in the state court action. Based on the limited amount of discovery Defendants have been able to conduct on the privity issue in the instant case so far, it appears that like the *Harris* plaintiffs, the Covington Plaintiffs were recruited as plaintiffs, are not responsible for payment of legal fees, and largely had not read the claims in this action before they were filed. As a result, Defendants have sought additional discovery on whether privity exists between the present Plaintiffs and the *Dickson* and *Harris* plaintiffs and to determine whether the person, or entity, financing and controlling this litigation is the same person or entity financing and controlling the *Dickson* litigation. (See Exhibit 1)

To date, Plaintiffs have refused to answer interrogatories seeking this information and several Plaintiffs who have already been deposed have testified that they are not paying their own legal fees and that they have no knowledge regarding who in fact is paying for the litigation. (See Exhibit 1; *see also* Exhibits 2 & 3 Deposition Excerpts of Covington Plaintiffs Rosa Mustafa and Marshall Ansin) Defendants wrote a deficiency letter to Plaintiffs but did not receive any response related to their discovery on this point. (See Exhibit 4, 2/1/16 Deficiency Letter to Plaintiffs' Counsel) Defendants emailed Plaintiffs' counsel to advise them that they planned to file this Motion in order to obtain the sought after information. (See Exhibit 5, 2/9/16 E-mail Correspondence to Plaintiffs' Counsel) In the email, Defendants even suggested, that as an alternative to being deposed, Plaintiffs' counsel could simply identify a witness that could fully answer Defendants' questions. However, despite Defendants efforts to remedy the situation without the need for added litigation, Plaintiffs' counsel will not agree to be deposed nor will they identify a witness who can provide the same information. (See Exhibit 6, Plaintiffs' Counsel Responsive E-mail)

ARGUMENT

I. **Defendants Are Entitled to Discover Information Relating to Potential Privity of Parties Between the Instant Plaintiffs and Plaintiffs in Prior Litigation Challenging North Carolina's 2011 Legislative Redistricting Plans.**

Defendants are entitled to information related to possible privity between the instant Plaintiffs and plaintiffs in the previous redistricting law suits. If privity can be established, the Full Faith and Credit Clause requires this Court to apply *res judicata* and

give preclusive effect to the *Dickson* state court judgment. *See In re Genesys Data Tech., Inc.*, 204 F.3d 124, 129 (4th Cir. 2000).

Under the doctrines of *res judicata* and collateral estoppel, a final judgment on the merits in a prior action precludes the parties *or their privies* from relitigating issues that were, or could have been, raised in that action. *Lawson v. Toney*, 169 F. Supp.2d 456, 462 (M.D.N.C. 2001) (citing *Thomas M. McInnis & Assocs., Inc. v. Hall*, 318 N.C. 421, 428, 349 S.E.2d 552, 556 (1986)) (emphasis added). The doctrines arose from the common law rule against claim splitting, which the North Carolina Supreme Court explained was “based on the principle that all damages incurred as the result of a single wrong must be recovered in one law suit.” *Bockweg v. Anderson*, 333 N.C. 486, 492, 428 S.E.2d 157, 161 (1993). This protects litigants from the burden of relitigating previously decided matters and promotes judicial economy by preventing repetitive litigation. *Little v. Hamel*, 134 N.C. App. 485, 487, 517 S.E.2d 901, 902 (1999).

The essential elements of *res judicata* “are: (1) a final judgment on the merits in an earlier lawsuit; (2) an identity of the cause of action in both actions; and (3) an identity of parties or their *privies* in both actions.” *Lawson*, 169 F. Supp. 2d at 462 (citing *Hogan v. Cone Mills Corp.*, 315 N.C. 127, 135, 337 S.E.2d 477, 482 (1985)). Privity can be established for a nonparty when the “nonpart[y] assume[s] control over litigation in which they have a direct financial interest and then seek to redetermine issues previously resolved.” *Montana v. U.S.*, 440 U.S. 147, 154 (1979).

Here, based on the deposition testimony of Plaintiffs Rosa H. Mustafa and Marshall Ansin, it is clear that Plaintiffs’ lawyers are directing this litigation and that

these individuals have been recruited by counsel, the North Carolina Democratic Party, or allied organizations to serve as nominal plaintiffs. Ms. Mustafa testified that she was “recruited” to the case by Doug Wilson, who was one of the *Dickson* plaintiffs and an employee of the Democratic Party. (See Exhibit 2, Excerpts of Deposition Testimony of Rosa Mustafa, pp. 20, 39) Specifically, Mr. Wilson asked her whether she “would be willing to participate” in a “court case that was coming up regarding” redistricting. (*Id.* at pp. 20, 25) Mr. Wilson did not even tell Ms. Mustafa what the goals of the lawsuit were or what they would specifically be challenging. (*Id.* at pp. 28, 32) Ms. Mustafa admitted that she had only seen the first five pages of Plaintiffs’ 95 page complaint which was filed on her behalf. (*Id.* at pp. 45-46) Finally, she testified that she was not responsible for her legal fees and did not know who was responsible for their payment. (*Id.* at pp. 35-36)

Likewise, Mr. Ansin testified that the SCSJ called him directly and asked him to become involved in the lawsuit. (See Exhibit 3, Excerpts of Deposition Testimony of Marshall Ansin, pp. 11-12)¹ He testified that he never would have sued on his own, is only in this lawsuit because “he was asked,” and had never seen the Complaint that was filed on his behalf. (*Id.* at pp. 12, 16, 17) Mr. Ansin, who is involved with Democrat Party organizations, specifically stated that it was his goal for the instant lawsuit to have redistricting done in a manner that did “not...enhance republican power.” (*Id.* at pp. 15,

¹ Mr. Ansin testified that an individual named “Anita” called him on behalf of the SCSJ and asked him if he would want to participate.

20) Like Ms. Mustafa, he is also not responsible for paying his own attorneys' fees and has no knowledge regarding who is in fact financing his law suit. (*Id.* at pp. 24-26)²

This testimony, like the deposition testimony of the *Harris* plaintiffs, makes it very apparent that an unknown party or parties are the persons who have instigated, directed, financed, and are controlling the current litigation and the prior *Dickson* litigation. (See D.E. 52-2 and 52-3, Deposition Excerpts of *Harris* plaintiffs Christine Bowser and David Harris)

Courts have held that “literal privity” is not required in order for parties to a subsequent lawsuit to be precluded from relitigating issues that were adjudicated in a previous action. See *Alpert’s Newspaper Delivery, Inc. v. N.Y. Times Co.*, 876 F.2d 266, 270 (2nd Cir. 1989). In *Alpert’s*, the Court held that involvement of the same trade association—as the “admitted mastermind and financier” —behind two successive law suits brought by different individual members of the association precluded relitigation of previously litigated antitrust issues. *Id.* at 270. Thus, the presence of a common driving force behind multiple lawsuits, seeking to litigate the same issues, creates sufficient identity between the parties for *res judicata* and collateral estoppel to apply. See *Christopher D. Smithers Foundation v. St. Luke’s-Roosevelt Hosp. Ctr.*, No. 00Civ.5502(WHP), 2003 WL 115234, at *3 (S.D.N.Y. Jan. 13, 2003); *Ellentuck v. Klein*, 570 F.2d 414, 425-26 (2nd Cir. 1978) (sufficient identity of parties for preclusion

² Defendants are in the process of deposing the remaining Plaintiffs and can advise the Court that their testimony is very similar to that given by Ms. Mustafa and Mr. Ansin, except, coincidentally, some of the Plaintiffs deposed after Ms. Mustafa and Mr. Ansin do not remember who recruited them to be Plaintiffs in this civil action.

purposes where both suits were funded by same property owners' association). This is particularly so in cases against the government, where if claim preclusion is not applied "broadly...governmental defendants could be subject to an overwhelming number of suits arising out of the same series of transactions." *Ruiz v. Comm'r of the Dep't of Transp. of the City of N.Y.*, 858 F.2d 898, 902 (2nd Cir. 1988) (sufficient identity of parties where two groups of truck drivers used same attorneys, made identical allegations, and revealed industry-wide strategy challenging a New York vehicle weight regulation in parallel state and federal lawsuits).

Here, Defendants seek to obtain reasonable, relevant information which they believe will show that, like in *Alpert's* and *Ellentuck*, a common force financing and controlling the *Dickson* litigation is financing and controlling the instant case such that Plaintiffs' claims are barred. North Carolina courts have previously shown that, with regard to *res judicata* and collateral estoppel, they are willing to "look beyond the nominal party whose name appears on the record as plaintiff [in determining whether privity between parties exists] to consider the legal questions raised as they may [reveal] the real party or parties in interest." *Whitacre P'Ship v. Biosignia, Inc.*, 358 N.C. 1, 36,- 591 S.E.2d 870, 893 (2004); *see also Int'l Telephone and Telegraph Corp. v. Gen. Telephone and Electronics Corp.*, 380 F. Supp. 976, 981 (M.D.N.C. 1974) (discussing, without disagreeing, cases in which courts found privity was established and opined that giving every member of a trade association the right to challenge a court order "would cause an excessive waste of judicial time and could lead to inconsistent decisions").

Defendants are entitled to discovery of “any non-privileged matter that is relevant to any party’s claim *or defense*.” Fed. R. Civ. P. 26(b)(1) (emphasis added). Since information regarding who is controlling and financing both the current litigation and the *Dickson* litigation is relevant to Defendants *res judicata* defense, the information must be produced.

II. Defendants Should Be Allowed Leave to Depose Plaintiffs’ Counsel.

Defendants asked Plaintiffs to provide a witness who could answer questions regarding how Plaintiffs were recruited to become Plaintiffs and who is financing the current litigation. (See Exhibits 1, 4, 5, & 6) Plaintiffs declined to identify any such witnesses or answer interrogatories relevant to those issues. Therefore, Defendants should be allowed to depose both Poyner and Spruill and the SCSJ because they are unable to obtain information they seek by any other means. Depositions of an opposing counsel are certainly not something that is prohibited. *See* Fed. R. Civ. P. 30(a) (a party may take the deposition of “any person”) (emphasis added). Circumstances where such depositions are allowed are limited to situations where the party seeking to take the deposition “has shown that (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case.” *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir. 1986) (internal citations omitted); *see also N.F.A. Corp. v. Riverview Narrow Fabrics, Inc.*, 117 F.R.D. 83 (M.D.N.C. 1987); *Static Control Components, Inc. v. Darkprint Imaging*, 201 F.R.D. 431 (M.D.N.C. 2001).

This Court itself has recognized that there “are very legitimate reasons for deposing a party’s attorney,” including the fact that the “attorney may be the person with the best information concerning nonprivileged matters...[like] the nature...of *services he rendered and the fees and expenses incurred.*” *N.F.A. Corp.*, 117 F.R.D. at 85 and n.2 (citing *Condon v. Petacque*, 90 F.R.D. 53 (N.D. Ill. 1981)) (emphasis added). In seeking to depose a party’s attorney, the “movant must demonstrate that the deposition is the only practical means available of obtaining the information. If there are other persons available who have the information, they should be deposed first [and] other methods, such as written interrogatories...should be employed.” *Id.* at 86.

Deposing Plaintiffs’ counsel is the only way to obtain the requested information. In both *Harris*, and the instant case, Defendants deposed named plaintiffs regarding who is financing their litigation. (See D.E. 52-2 and 52-3; *see also* Exhibits 2 & 3) No plaintiff has had any knowledge regarding this subject matter. Defendants have even emailed Plaintiffs’ counsel and requested that they identify any other individual who could answer Defendants’ questions, but Plaintiffs’ counsel has declined to do so. (See Exhibits 5 & 6) Likewise, Defendants, as instructed by the holding in *N.F.A Corp.*, served written interrogatories on this subject, but Plaintiffs’ similarly refused to respond even after being sent a deficiency letter. (See Exhibits 1 & 4) Since there are no “other persons available who have the information,” and because written interrogatories have been ignored, Defendants should be allowed to depose Plaintiffs’ counsel on the narrow issues outlined herein. *N.F.A. Corp.*, 117 F.R.D. at 86.

To the extent that Plaintiffs argue that the limited information that Defendants seek on this subject matter is protected by the attorney-client privilege or the work product doctrine, that argument is specious. *See N.C. Elec. Membership Corp. v. Carolina Power & Light Co.*, 110 F.R.D. 511 (M.D.N.C. 1986) (billing records and attorney hourly statements which do not reveal client communications are not privileged); *In re Special Grand Jury No. 81-1*, 676 F.2d 1005 (4th Cir. 1982), *vac. on other grounds*, (payment of fees and expenses generally is not privileged information because such payments ordinarily are not communications made for the purpose of obtaining legal advice).

In *Condon*, a case cited by this Court in *N.F.A. Corp.*, the court held that “neither the attorney-client privilege nor the work product doctrine...constitutes an absolute ban on all discovery sought from an attorney simply because of his professional status...” *Condon*, 90 F.R.D. at 54. The privileges do not “foreclose inquiry into the fact of representation itself...as long as the substance of the attorney-client relationship is shielded from disclosure.” *Id.* Thus, the “structural framework” of the attorney-client relationship may be discovered. *Id.*; *see also Upjohn Co. v. U.S.*, 49 U.S. 383, 395-96 (1981) (The attorney-client privilege “only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney”).

The *Condon* defendants were attempting to discover records and documents related to when a plaintiff first contacted his attorney in an effort to develop a statute of limitations defense. *Condon*, 90 F.R.D. at 53. The court held that all the information

sought was “closer in kind to routine business records than to the traditional work product of attorneys” and was “properly discoverable upon defendants’ showing that they ha[d] substantial need for the material in conjunction with the preparation of their defense and that they would...be unable to obtain the information by other means.” *Id.* at 54-55.

This is not a case where the Plaintiffs called counsel seeking legal representation. Instead, the Plaintiffs were actively recruited to join the instant lawsuit. In this case, Defendants seek only information related to the *fact* of Plaintiffs’ counsels’ representation itself—specifically how Plaintiffs were recruited and who is financing and controlling the representation—not any information related to the *substance* of Plaintiffs’ counsels’ relationship with their clients or their litigation strategy. The discovery aimed at obtaining this information is exactly the type of “structural framework” information that the *Condon* court held, and this Court agreed, is not privileged and open to discovery. *N.F.A. Corp.*, 117 F.R.D. at 85 and n. 2. As such, the Court should allow Defendants leave to depose counsel for Plaintiffs.³

³ Moreover, the attorney-client privilege only protects communications with *clients*. *U.S. v. Duke Energ. Corp.*, 208 F.R.D. 553, 556 (M.D.N.C. 2002) (citing *Hawkins v. Stables*, 148 F.3d 379, 383 (4th Cir. 1998)). If the third-party financing and controlling the current litigation, and the *Dickson* litigation, is not a client of Poyner and Spruill or SCSJ the privilege would not apply to *any* communication they had with Plaintiffs’ counsel, much less communications regarding financing of the redistricting lawsuits.

This the 10th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr
N.C. State Bar No. 10871
Phillip J. Strach
N.C. State Bar No. 29456
thomas.farr@ogletreedeakins.com
phil.strach@ogletreedeakins.com
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
Co-counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO DEPOSE COUNSEL FOR PLAINTIFFS** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Edwin M. Speas, Jr.
John W. O'Hale
Carolina P. Mackie
Poyner Spruill LLP
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
espeas@poynerspruill.com
johale@poynerspruill.com
cmackie@poynerspruill.com
Attorneys for Plaintiffs

Anita S. Earls
Allison J. Riggs
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
anita@southerncoalition.org
allisonriggs@southerncoalition.org
Attorneys for Plaintiffs

Adam Stein
Tin Fulton Walker & Owen, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
astein@tinfulton.com
Attorney for Plaintiffs

This the 10th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr
Thomas A. Farr
N.C. State Bar No. 10871
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Telephone: 919.787.9700
Facsimile: 919.783.9412
thomas.farr@odnss.com

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-cv-00399

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, *et al.*,

Defendants.

PLAINTIFFS' FIRST
SUPPLEMENTAL RESPONSES
TO DEFENDANTS' FIRST SET
OF INTERROGATORIES

Pursuant to Fed. R. Civ. Pro. 26 and 33, Plaintiffs hereby serve the following First Supplemental Responses to Defendants' First Set of Interrogatories, supplementing the responses that Plaintiffs served on January 8, 2016 (the "Responses").

RE-ASSERTION / NON-WAIVER OF OBJECTIONS

With regard to any and all General Objections that were asserted in the Responses, Plaintiffs incorporate by reference and/or re-assert all such objections as if fully set forth hereinafter. Specific objections are re-asserted hereinafter.

INTERROGATORIES

1. Provide your full name, date of birth, and the addresses of all places where you have resided on or after January 1, 2004 to the present, including the dates you resided at each place, the names of the persons who resided at each place with you, and the relationship between you and each person with whom you resided.

OBJECTIONS AND RESPONSE: Plaintiffs incorporate by reference their General Objections as if fully set forth in response to this interrogatory. Moreover, to the extent that the interrogatory seeks the names and relationships of "persons who resided at

Rogers, Juanita

I don't know any of them personally.

Sloane, Ruth

My daughter is Aisha Dew. I know that she is a plaintiff in the *Dickson/NAACP* litigation, but I did not learn about that from her. I learned she is a plaintiff in that case because someone mentioned it during a meeting of Democrats in Mecklenburg County.

I have had a conversation with my daughter about that case, but it was several months ago or more, and I don't specifically remember what we discussed.

I also know Jane Whitley and Alma Adams. They are involved with politics in Mecklenburg County. I have not had any communications with them about the *Dickson/NAACP* litigation.

6. Describe your responsibility, if any, for the payment of any attorney's fees or costs incurred by your counsel or any attorney's fees or costs that might be awarded against you by the court in this lawsuit. If you are not responsible for such fees or costs, identify the person(s) or entities who are responsible for these fees and costs by stating the name, address, and telephone for any such person(s) or entities and describe your relationship, if any, with the person(s) or entities identified.

OBJECTIONS: Plaintiffs incorporate by reference their General Objections as if fully set forth in response to this interrogatory. Plaintiffs further object to this interrogatory on the grounds that it seeks attorney-client privileged information.

Plaintiffs further object to this interrogatory on the grounds that it is overly broad and is not reasonably calculated to lead the discovery of admissible evidence.

Ansin, Marshall

I do not have any responsibility for paying attorney's fees in connection with this litigation. I do not know who is responsible for paying attorney's fees in connection with this litigation.

Englander, Mark

I do not have any responsibility for paying attorney's fees in connection with this litigation. I do not know who is responsible for paying attorney's fees in connection with this litigation.

Hodge-Mustafa, Rosa

I do not have any responsibility for paying attorney's fees in connection with this litigation. I do not know who is responsible for paying attorney's fees in connection with this litigation.

Mingo, Antoinette

I do not have any responsibility for paying attorney's fees in connection with this litigation. I do not know who is responsible for paying attorney's fees in connection with this litigation.

Sloane, Ruth

I do not have any responsibility for paying attorney's fees in connection with this litigation. I do not know who is responsible for paying attorney's fees in connection with this litigation.

7. Describe any involvement by you in the 2011 redistricting process conducted by the North Carolina General Assembly, including but not limited to attending public hearings, seminars, speeches, workshops, demonstrations, protests, or other events regarding redistricting, reviewing proposed maps of districts, or engaging in discussions with members of the General Assembly or others regarding the drawing of district lines for the North Carolina House or Senate or the preclearance of those districts.

OBJECTIONS AND RESPONSE: Plaintiffs incorporate by reference their General Objections as if fully set forth in response to this interrogatory. Plaintiffs further object to this interrogatory on the ground that it infringes upon their First Amendment associational privilege. To the extent Plaintiffs have responsive information, it is set forth below.

Ansin, Marshall

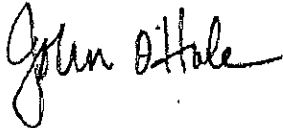
None.

Campbell, Susan

Went to a public hearing in Greensboro in the summer of 2011, spoke at the public hearing.

This the 3rd day of February, 2016.

POYNER SPRUILL LLP



Edwin M. Speas, Jr.
N.C. State Bar No. 4112
espeas@poynerspruill.com
John W. O'Hale
N.C. State Bar No. 35895
johale@poynerspruill.com
Caroline P. Mackie
N.C. State Bar No. 41512
cmackie@poynerspruill.com
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
Telephone: (919) 783-6400
Facsimile: (919) 783-1075

Counsel for Plaintiffs

SOUTHERN COALITION FOR SOCIAL
JUSTICE

Anita S. Earls
N.C. State Bar No. 15597
anita@southerncoalition.org
Allison J. Riggs
State Bar No. 40028
allisonriggs@southerncoalition.org
George B. Eppsteiner
N.C. State Bar No. 42812
George@southerncoalition.org
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380
Facsimile: 919-323-3942

Counsel for Plaintiffs

TIN FULTON WALKER & OWEN, PLLC

Adam Stein (Of Counsel)
N.C. State Bar # 4145
astein@tinfulton.com
Tin Fulton Walker & Owen, PLLC
1526 E. Franklin St., Suite 102
Chapel Hill, NC 27514
Telephone: (919) 240-7089

Counsel for Plaintiffs

EXHIBIT 2

1 ROUGH DRAFT
2 WARNING! The following is an unedited, uncertified rough
3 draft transcript of proceedings produced in instant form.
4 It is being made available to counsel only as an adjunct to
5 a final certified transcript of these proceedings.
6
7 There will be discrepancies between this instant form and
8 the final transcript. The instant form may contain
9 reporter's notes, misspelled names or terms, nonsensical
10 word combinations, phonetically translated text, and/or
11 omissions within the text of the draft transcript.
12
13 There will be a discrepancy between page numbers appearing
14 in the unedited rough draft and the edited, proofread,
15 corrected, and certified final.
16
17 This rough draft transcript is being provided for counsel's
18 review to augment counsel's notes. The rough draft
19 transcript may not be cited in any type of court proceedings
20 or used at any time to rebut or contradict the final
21 certified transcript of proceedings, and it is not to be
22 distributed to any other parties to this action.
23
24
25

1 P R O C E E D I N G S
2 ROSA MUSTAFA,
Page 1

3 Q. And what is Ms. Waddell's race?

4 A. She's African American.

5 Q. How about, like, in council district five
6 or six? Do you think a candidate of choice in the
7 African American community could win in one of those
8 districts?

9 A.. I can't say. I don't know.

10 Q. And Ms. Mustafa, how did you become a
11 plaintiff in this case?

12 A. A member from the North Carolina Democratic
13 Party had asked me if I would consider being a
14 plaintiff in the case, and I told him to let me
15 review the documents to see, and I would let him
16 know, and that's how I became involved.

17 Q. So you said a member of the North Carolina
18 Democratic Party?

19 A. Uh-huh.

20 Q. Who was that?

21 A. Doug Wilson.

22 Q. Who is Mr. Wilson?

23 A. He's at the state level for the democratic
24 party.

25 Q. What is his position?

24

1 A. I don't know what his role is now. I know
2 he worked with Kay Hagan's campaign, too.

3 Q. Where does Mr. Wilson live?

4 A. I think he lives in Charlotte.

5 Q. Do you know if he's an employee of the
6 state Democratic Party?

7 A. He is.

Page 20

1 Commissioner District 2?

2 A. Maybe 40. I would say 40 percent,
3 something like that.

4 Q. Now, going back to Mr. Wilson and when you
5 were asked to join this lawsuit, was Mr. Wilson the
6 only person who approached you about joining the
7 lawsuit?

8 A. Yes.

9 Q. And I know you can't put a time frame on
10 it, but you think maybe 2013, 2014 was the first
11 conversation that you had with Mr. Wilson about
12 joining the lawsuit?

13 A. Yes.

14 Q. And do you remember specifically what
15 Mr. Wilson told you the first time he spoke with you
16 about that?

17 A. I can't be specific, no. I mean, vaguely
18 regarding the district, and a court case that was
19 coming up regarding the lines, and that's it.

20 Q. You said he vaguely talked to you about the
21 district. What district are you talking about?

22 A. I'm not sure which district, whether it's
23 congressional. I don't know, really.

24 Q. He just talked to you about a district that
25 you lived in?

1 A. Yes, one I actually lived in. I used to be
2 in 12, and then I was moved.

12 Q. Were you aware that a lawsuit similar to
13 this one was filed over the 12th congressional
14 district?

15 A. Yes. Yes.

16 Q. And how did you become aware of that?

17 A. Just television. Hearsay. It wasn't,
18 like, anything that I was involved in on that. You
19 know what I mean?

20 Q. Did Mr. Wilson or anybody tell you that a
21 lawsuit had been filed involving the 12th
22 congressional district?

23 A. No.

24 Q. You think you heard about it on television
25 at some point?

‡

33

1 A. I think so. Some kind of coverage.

2 Q. Do you remember when you first heard about
3 that?

4 A. No.

5 Q. Now, in your conversation with Mr. Wilson
6 about this lawsuit, did Mr. Wilson tell you what the
7 goals of the lawsuit were?

8 A. No.

9 Q. And I think you said you told him that you
10 would be willing to be involved; is that right?

11 A. Yes.

12 Q. How did you make the decision to be
13 involved in a lawsuit if you didn't know what the
14 goals of the lawsuit were?

15 A. Well, I knew that our district was -- the
16 district that I lived in -- my belief was that our

3 A. Yes.

4 Q. And you would do it for the congressional
5 district that you live in?

6 A. Yes.

7 Q. I see. And do you have organizations for
8 any of legislative districts that you live in? Do
9 you have State House or State Senate district
10 committee?

11 A. Do I have?

12 Q. Do you participate? Does the democratic
13 party have a -- is there a Senate District 38
14 executive committee, for example?

15 A. Not that I know of. I don't think so.

16 Q. Some parties do that. So I didn't know
17 whether that was the case here.

18 So, again, thinking back to Mr. Wilson,
19 you're saying he didn't tell you what the goals of
20 the lawsuit was?

21 A. No.

22 Q. Did he tell you who was paying for the
23 lawsuit?

24 A. No.

25 Q. At what point did you decide that you

38

1 wanted to participate in the lawsuit?

2 A. Probably the second conversation, I said I
3 would participate in a lawsuit.

4 Q. I want to understand, I guess, what kind of
5 motivated you to participate in the lawsuit because a
6 lot of people don't want to get involved in lawsuits.

7 A. I know.

17 this case, right?

18 A. Sure.

19 Q. What if someone didn't pay one of your
20 attorneys? Was that a concern for you?

21 A. It would be unfortunate, but that is not my
22 concern, no.

23 Q. But you didn't think you would be on the
24 hook for it?

25 A. No.

41

1 Q. Why did you believe that you would never be
2 on the hook for any attorneys' fees or costs?

3 MS. MACKIE: I'm going to object because if
4 your understanding of this comes from
5 information you got from our office or the
6 Southern Coalition for Social Justice, then it
7 would be privileged.

8 THE WITNESS: Okay. Help me.

9 MS. MACKIE: Can you repeat your question?

10 BY MR. MCKNIGHT:

11 Q. Why is it that you were not concerned about
12 being on the hook for any attorneys' fees or costs in
13 this lawsuit?

14 A. Well, my past experience you have to be
15 contracted to be on the hook for any financial
16 responsibilities.

17 So I knew I never signed anything to be the
18 paying party or financially responsible, so I didn't
19 have a concern with that.

20 Q. And you so you don't have a contract or an

21 agreement with any of the attorneys who are
22 representing you in this case?

23 MS. MACKIE: Objection to the extent that
24 calls for an answer that's privilege.

25 BY MR. MCKNIGHT:

42

1 Q. I don't think the existence of an agreement
2 itself would be privilege. I'm not asking about what
3 the agreement says. We can talk about that offline,
4 but I'm asking whether you believe or whether you
5 know if you have an agreement with any of the
6 attorneys who are representing you in this lawsuit
7 with respect to the payment of fees?

8 A. No, I have no agreement.

9 Q. To your knowledge, you've never signed any
10 engagement agreement or any other sort of agreement?

11 A. That's correct.

12 Q. Now, after you spoke with Mr. Wilson, I
13 guess, the second time, is that when you told him
14 that you wanted to participate?

15 A. Yes.

16 Q. These times that you talked with
17 Mr. Wilson, were they in person or over the
18 telephone?

19 A. Phone.

20 Q. Okay. So he called you at your home or on
21 your cell phone?

22 A. That's correct.

23 Q. And did you -- are you saying you only
24 spoke to him two times or after the second time that
25 he approached you, is that when you -- did you speak

8 Q. We're back on the record after a short
9 break here. And during the course of the break, you
10 didn't discuss the substance of your testimony today
11 with your counsel, did you?

12 A. No.

13 Q. Ms. Mustafa, we were talking about when
14 Mr. Wilson recruited you for this lawsuit. You said
15 that at some point he sent you a document that you
16 reviewed and that after reading that document you
17 decided you wanted to join the lawsuit.

18 Can you tell me what you said to Mr. Wilson
19 when you told him that you wanted to join the
20 lawsuit?

21 A. I said, "sure. I would help out in any way
22 that I could."

23 Q. And what happened next?

24 A. He just added my name. He said, "I'll put
25 your name in," and that was it. There was nothing

1 else to do.

2 Q. After he put your name in, did anyone
3 contact you?

4 A. The law firm contacted me months and months
5 and months later. I had almost forgotten about it.

6 Q. And what law firm was that? Is it the law
7 firm that Mr. O'Hale and Ms. Mackie work for?

8 A. Spruill.

9 Q. Poyner and Spruill?

10 A. Yeah.

11 Q. Okay. There are several law firms involved

8 A. I don't know.

9 MR. MCKNIGHT: Ms. Mustafa, I'm going to
10 hand you a copy of a document that I'm going to
11 mark as Mustafa 2.

12 (EXHIBIT NO. 2 MARKED FOR IDENTIFICATION.)

13 BY MR. MCKNIGHT:

14 Q. I'll be glad to give you a minute to just
15 look at this document or thumb through it or whatever
16 you feel like you need to do, and then you can let me
17 know when you're ready for some questions.

18 A. How much of this do you want me to read?

19 Q. I don't want to ask about any specific
20 paragraphs. I just want to know, first of all, do
21 you recognize this document that has been marked as
22 Exhibit 2?

23 A. I cannot say 100 percent. I think I've
24 seen the first couple of pages.

25 Q. Well, you know this first page has you

53

1 listed on it as a plaintiff.

2 A. Yes, I've seen this.

3 Q. Okay. So you've seen at least the first
4 page before?

5 A. I've probably -- yeah, this first couple of
6 pages. Maybe one through five or so.

7 Q. So I'll represent to you, ma'am, that this
8 is a copy of the complaint that was filed by your
9 counsel in this matter.

10 you're saying that you think that you have
11 seen perhaps the first five pages of this before

12 today?

13 A. Yes.

14 Q. And do you remember the first time that you
15 ever saw this complaint?

16 A. Not 100 percent sure, but this appears to
17 be the document that Doug Wilson sent to me.

18 Q. And how long ago did you say that you
19 thought Mr. Wilson had sent you this document?

20 A. Year and a half, two years ago, something.

21 Q. Ms. Mustafa, if you will turn with me to
22 page 45 of this complaint, I want to direct your
23 attention to a map that appears at the bottom of that
24 page. Do you see that?

25 A. Yes.

54

1 Q. Now, do you recognize what this map is?

2 A. Is it the precincts for -- precinct map
3 for -- district map for 38?

4 Q. Yes, ma'am. I think you're exactly on the
5 right track. This is a map that shows all of the
6 State Senate Districts in Mecklenburg County and it's
7 divide up by precinct, and the precincts are labeled
8 by number. Do you see that?

9 A. Yes.

10 Q. And do you see your precinct on this map?

11 A. I do.

12 Q. And that's precinct 80?

13 A. Yes.

14 Q. And that precinct is not split between any
15 other senate District, is it?

16 A. No.

EXHIBIT 3

1 ROUGH DRAFT

2 WARNING! The following is an unedited, uncertified rough
3 draft transcript of proceedings produced in instant form.
4 It is being made available to counsel only as an adjunct to
5 a final certified transcript of these proceedings.

6
7 There will be discrepancies between this instant form and
8 the final transcript. The instant form may contain
9 reporter's notes, misspelled names or terms, nonsensical
10 word combinations, phonetically translated text, and/or
11 omissions within the text of the draft transcript.

12
13 There will be a discrepancy between page numbers appearing
14 in the unedited rough draft and the edited, proofread,
15 corrected, and certified final.

16
17 This rough draft transcript is being provided for counsel's
18 review to augment counsel's notes. The rough draft
19 transcript may not be cited in any type of court proceedings
20 or used at any time to rebut or contradict the final
21 certified transcript of proceedings, and it is not to be
22 distributed to any other parties to this action.

23
24
25

1 PROCEEDINGS

2 MARSHALL ANSIN,

Page 1

17 Alexander; the other is Ford. I don't remember which
18 one is which.

19 Q. But you know one is in the House and one is
20 in the Senate?

21 A. Yes.

22 Q. And Mr. Alexander's first name is Kelly
23 Alexander; is that right?

24 A. I'll take your word for it.

25 Q. Do you know Mr. Ford's first name to be

13

1 Joel?

2 A. I do not know.

3 Q. You just know it's Alexander and Ford?

4 A. Yes.

5 Q. Mr. Ansin, how did you become a plaintiff
6 in this case?

7 A. To the best of my recollection, I got a
8 call from someone in the southern-something social
9 justice league, asking me if I would want to
10 participate.

11 Q. And does the name Souther Coalition for --

12 A. Southern Coalition For Social Justice,
13 yeah.

14 Q. So you hadn't talked with anyone about the
15 lawsuit before someone from the Southern Coalition
16 for social Justice called you?

17 A. Yes.

18 Q. The answer is no, you had not?

19 A. I'm sorry. Repeat the question.

20 Q. Sure. That was -- that was not clear.

21 Before you got a call from someone in the
22 Southern Coalition for Social Justice about the
23 lawsuit, you hadn't talked with anyone else about it?
24 A. I had not.
25 Q. And do you remember who from the Southern

14

1 Coalition for Social Justice called you about the
2 lawsuit?
3 A. If I remember, her first name was Anita. I
4 do not remember her last name.
5 Q. Does Earls ring a bell?
6 A. It does not.
7 Q. And had you ever signed up to be on the
8 Southern Coalition for Social Justice's mailing list
9 or anything like that?
10 A. No.
11 Q. And I'm not going to -- I don't want to ask
12 about conversations that you had with Anita or
13 anybody with the Southern Coalition at this point,
14 but do you know how they would have gotten your name?
15 A. I do not.
16 Q. Okay. And when did you speak with Anita of
17 the Southern Coalition?
18 A. It was last year sometime. I do not
19 remember the date.
20 Q. And before you spoke with the Southern
21 coalition for social justice about this lawsuit, had
22 you ever considered filing a lawsuit related to
23 either the Senate District or the House District in
24 which you reside?
25 A. No.

8 some of them may be underpopulated; is that right?

9 A. That's correct.

10 Q. So would you still want the district lines
11 to stay the same in that case or would you be okay
12 with them being redrawn?

13 A. I think if they were to revert to the way
14 they were before they were redrawn by the legislature
15 and in a more equitable way of the drawing them so as
16 to not to enhance the republican power, that would be
17 a better solution.

18 Q. So it would be your preference for the
19 democrats to be able to gain more power; is that
20 right?

21 A. I think it needs to be fair, not biased
22 towards either party.

23 Q. But you mentioned the republicans,
24 specifically?

25 A. Well, they're the ones who changed the way

18

1 things are now.

2 Q. And do you believe that gerrymandering ever
3 occurred before republicans drew the lines this time
4 around?

5 A. Like I said, I come from Massachusetts, and
6 my recollection is the first time it happened was in
7 Massachusetts by someone named Gerry, and that was
8 sometime in the 1800s. So to answer your question,
9 yes.

10 Q. But before this lawsuit, you've never
11 brought a lawsuit about redistricting or

12 gerrymandering before, right?

13 A. That is correct.

14 Q. And why did the gerrymandering that you say
15 occurred this time concern you enough to want to
16 become a plaintiff in a lawsuit?

17 A. First of all, I was asked. And secondly,
18 like I said, I believe it to be a form of cheating.
19 So having the opportunity to participate seemed a
20 logical extension of the way I feel.

21 Q. But it's not something you would have done
22 had you not been asked?

23 A. Yes. Asked and answered, I believe.

24 Q. Okay. Fair enough.

25 MR. MCKNIGHT: Mr. Ansin, I want to hand

19

1 you a document now that I'm going to mark as
2 Ansin Exhibit 2. And John, this is just a copy
3 of the complaint you saw a minute ago. I didn't
4 bring an extra copy.

5 MR. O'HALE: I don't need one.

6 MR. MCKNIGHT: I figured you're probably
7 familiar with it by now.

8 (EXHIBIT NO. 2 MARKED FOR IDENTIFICATION.)

9 BY MR. MCKNIGHT:

10 Q. Mr. Ansin, I want to ask you about this
11 document that I've just handed you that is marked as
12 Exhibit 2. Do you recognize this document?

13 A. I do not.

14 Q. Okay. Do you believe you've ever seen it
15 before today?

16 A. I have not.

Page 16

17 Q. Well, I'll represent to you, sir, that this
18 is a copy of the complaint that your attorneys filed
19 on your behalf in this lawsuit. If you'll hang on
20 just a minute, I'll see what other questions I may
21 have.

22 Mr. Ansin, if you'll turn with me to page
23 45 of this document. They're numbered at the bottom.
24 And there's a map at the bottom of page 45. Do you
25 see that?

20

1 A. Yes.

2 Q. Do you recognize what that map is?

3 A. Well, it looks like Mecklenburg County.

4 Q. Exactly. And this is actually a map that
5 contains all of the State Senate Districts that are
6 in Mecklenburg County, and they're in different
7 colors, and they're actually numbered. Your State
8 Senate District is District 38, and it's in light
9 green. Do you see that?

10 A. Yes.

11 Q. Does that appear to be an accurate
12 depiction of what your State Senate District looks
13 like, to the best of your knowledge?

14 A. To the best of my knowledge, yes.

15 Q. I think you said before you moved, correct,
16 you lived in precinct 128?

17 A. Yes.

18 Q. Do you see that on there? It looks like
19 that's in the top part of the district, kind of near
20 the pink?

3 is interrogatory two.

4 And this question asked you to identify any
5 political party, organization, political committee,
6 candidate campaign committee or related organization
7 that you have worked for, volunteered for or held any
8 position with since January 1st of 2004. Do you see
9 that?

10 A. Yes.

11 Q. And your response to this question is on
12 page 18. And in your response you said that you were
13 the temporary secretary treasurer for precinct 128
14 from April to June of 2015; is that right?

15 A. Yes.

16 Q. And do you currently hold any position
17 with the democratic party at any level?

18 A. I do not.

19 Q. Is that the only position that you've held
20 with the democratic party at any level?

21 A. Ever?

22 Q. Since 2004.

23 A. Yes, that's the only position.

24 Q. You're thinking previously you may have
25 held some type of position with the democratic party

24

1 at some point?

2 A. In Florida.

3 Q. I think you said you attended the
4 Mecklenburg County Convention as a delegate. Do you
5 remember what year that was?

6 A. 2015.

7 Q. And have you had any other political

21 the plaintiffs who are listed here. These are the
22 parties who were involved in the Dickson versus Rucho
23 lawsuit. And will you look through the names of the
24 plaintiffs who are listed at the top and let me know
25 if you recognize any of those names.

28

1 A. I do not recognize any of those names.

2 MR. MCKNIGHT: I want to hand you another
3 document that I'm going to mark as Exhibit 6.

4 (EXHIBIT NO. 6 MARKED FOR IDENTIFICATION.)

5 BY MR. MCKNIGHT:

6 Q. This is a cover page of the complaint that
7 was filed in a lawsuit known as North Carolina State
8 Conference or Branches of the NAACP versus State of
9 North Carolina.

10 will you look at the plaintiffs listed
11 there and let me know if you're familiar with any of
12 those.

13 A. I do not.

14 Q. Does the name Christine Bowser ring a bell
15 to you?

16 A. No.

17 Q. How about David Harris?

18 A. No.

19 Q. In Exhibit 4, turning back to that one,
20 that's the updated discovery responses. Would you
21 look at page 17, please.

22 All right. Page 17 contains interrogatory
23 six, and it just asks you to describe your
24 responsibility, if any, for the payment of any
25 attorneys' fees or costs incurred by your counsel or

1 any attorneys' fees or costs that might be awarded
2 against you in this lawsuit by the Court. It says if
3 you're not responsible for the payment of such fees
4 or costs to identify the person who is.

5 And you answered this question on page 18.

6 And your answer was that you do not have any
7 responsibility for paying attorneys' fees in
8 connection with this litigation; is that correct?

9 A. Yes.

10 Q. And then your next sentence says you do not
11 know who is responsible for paying the attorneys'
12 fees in connection with this lawsuit; is that
13 correct?

14 A. I do not.

15 Q. Is that something that you've ever inquired
16 about?

17 A. No.

18 Q. Do you have any agreement that states --
19 any letter or agreement or contract or anything of
20 that nature that states who is responsible for paying
21 the attorneys' fees that are incurred by your counsel
22 in this litigation?

23 A. No.

24 Q. So you've never received any document to
25 that effect?

1 A. I did not.

2 Q. I believe you said that's not something

3 that you have inquired about; is that right?

4 A. That's correct.

5 Q. Why not?

6 A. The thought just never really crossed my
7 mind.

8 Q. So you don't have any concerns about ever
9 being on the hook for any fees or costs in this
10 lawsuit?

11 A. No.

12 Q. Were you aware that the defendants in this
13 lawsuit had asked you to produce document in your
14 possession that might be related to your claims in
15 this case for the redistributing process?

16 A. Ask that again, please.

17 Q. Were you aware that the defendants in this
18 lawsuit had asked you as a plaintiff to produce any
19 documents that were in your possession that were
20 either related to your claims or allegations in this
21 case or were related to the redistricting process?

22 A. Yes.

23 Q. Did you search for those documents?

24 A. I searched my e-mail for anything regarding
25 redistricting or -- yeah, redistricting.

31

1 Q. And is the e-mail address that you
2 searched, is it Marsansin@hotmail.com?

3 A. Yes.

4 Q. Is that the only e-mail address that you
5 have?

6 A. No.

7 Q. Okay.

EXHIBIT 4

Ogletree Deakins

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

Attorneys at Law

4208 Six Forks Road, Suite 1100

Raleigh, NC 27609

Telephone: 919.787.9700

Facsimile: 919.783.9412

www.ogletreedeakins.com

Michael D. McKnight
919.789.3159
michael.mcknight@ogletreedeakins.com

February 1, 2016

Anita S. Earls
Allison J. Riggs
George E. Eppsteiner
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707

Edwin M. Speas, Jr.
John W. O'Hale
Caroline P. Maokie
Poyner Spruill LLP
301 Fayetteville Street, Suite 1900
Raleigh, NC 27601

Adam Stein
Tin Fulton Walker & Owen, PLLC
1526 E. Franklin St., Suite 102
Chapel Hill, NC 27514

RE: *Covington, et al. v. State of North Carolina, et al.*

Dear Counsel:

I write regarding Plaintiffs' Objections and Responses to Defendants' First Set of Interrogatories and First Request for Production of Documents. The responses are deficient in several areas, described below. This will serve as Defendants' request that Plaintiffs supplement those deficient responses. We ask that you provide supplemental responses as soon as possible but at least two days before the scheduled deposition of any plaintiff about whom additional information or documents have been requested.

Interrogatory #2: Interrogatory #2 requests information regarding the individual plaintiffs' involvement with political party organizations, political committees, candidate campaign committees, or any related organization. Please answer Interrogatory #2 with respect to plaintiffs Herman Lewis, Crystal Johnson, Channelle James, Catherine Kimel, and Mark R. Englander.

Interrogatory #3: Interrogatory #3 requests information regarding plaintiffs' membership in organizations that were plaintiffs in the *Dickson* litigation. Please answer Interrogatory #3 with respects to plaintiffs Herman Lewis, Viola Figueroa, Crystal Johnson, DeDreana Freeman, Mary Thomas, Channelle James, Rosa Mustafa, Ruth Sloane, and Mark R. Englander.

Interrogatory #4: Interrogatory #4 requests information regarding plaintiffs' associations with organizations that were plaintiffs in the *Dickson* litigation. Please answer Interrogatory #4 with respects to plaintiffs Herman Lewis, Viola Figueroa, Crystal Johnson, DeDreana Freeman,

Athens • Austin • Berlin (Germany) • Birmingham • Boston • Charleston • Charlotte • Chicago • Cleveland • Columbia • Dallas • Denver • Detroit • Mexico
Greenville • Houston • Indianapolis • Jackson • Kansas City • Las Vegas • London (England) • Los Angeles • Memphis • Mexico City (Mexico) • Miami
Milwaukee • Minneapolis • Monroeville • Nashville • New Orleans • New York City • Orange County • Philadelphia • Phoenix • Pittsburgh • Portland • Raleigh
Richmond • St. Louis • St. Thomas • San Antonio • San Diego • San Francisco • Seattle • Stamford • Tampa • Toronto (Canada) • Torrance • Tucson • Washington

Channelle James, Susan Campbell, Rosa Mustafa, Antoinette Mingo, Ruth Sloane, and Mark R. Englander. Additionally, please supplement your responses to include the dates of any financial support, the dates of any communications received, and a summary of the nature of any communications.

Interrogatory #5: Interrogatory #5 requests information regarding any relationships between plaintiffs' and the plaintiffs in the *Dickson* and *Harris* litigation. Plaintiffs have objected to this interrogatory on the grounds that it is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. The request, on its face, is limited to a discrete set of individuals (prior plaintiffs) and therefore cannot be construed as "overly broad." The existence and nature of any relationship with the plaintiffs in earlier, nearly identical redistricting lawsuits is relevant to the issue of how each individual plaintiff became involved in this lawsuit, their reasons for doing so, and defenses that have been raised by defendants to the claims asserted in this matter by the Plaintiffs.

Interrogatory #6: Interrogatory #6 requests information regarding attorney's fees and costs that each individual Plaintiff is responsible for, and if the Plaintiff is not responsible for paying such fees and costs, the identity of the individual who is responsible. Plaintiffs have objected to this interrogatory on the grounds that it seeks attorney-client privileged information and that it is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs have not shown how the information sought in Interrogatory #6 infringes on Plaintiffs' attorney-client privilege. The information sought is relevant to the issue of how each individual Plaintiff became involved in this lawsuit, their reasons for doing so, and defenses that have been raised by defendants to the claims asserted in this matter.

Interrogatory #9: Interrogatory #9 requests information regarding the individual Plaintiffs' social media accounts. Please answer Interrogatory #9 with respects to plaintiffs Herman Lewis, Crystal Johnson, Gregory Tucker, Sr., Channelle James, Catherine Kimmel, Vanessa Martin, Antoinette Mingo, and Mark R. Englander. Regarding information already produced, please supplement responses lacking the usernames for each account, e-mail addresses associated with the account, and the dates of membership.

Interrogatory #10: Interrogatory #10 asks Plaintiffs to identify any of the findings of fact made by the three-judge panel in *Dickson, et al., v. Rucho, et al.*, No. 11 CVS 16896, and *North Carolina State Conference of Branches of the NAACP, et al., v. State of North Carolina, et al.*, No. 11 CVS 16940 with which they disagree. Plaintiffs have objected on the grounds that the interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs in this case have challenged the legality of a number of North Carolina legislative districts. Plaintiffs' factual contentions regarding findings of fact made by the *Dickson* court regarding these same legislative districts are relevant to Plaintiffs' claims that the districts violate the law. Furthermore, Interrogatory #10 does not seek Plaintiffs' legal opinions or conclusions regarding the previously made findings of fact. The interrogatory instead seeks to understand why Plaintiffs believe that any finding of fact made by the *Dickson* court with respect to a district in which they reside is erroneous. It is also difficult to understand Plaintiffs' objection regarding the "pending litigation" in *Dickson* since Plaintiffs have repeatedly contended that they

are different from those in *Dickson*. Finally, Plaintiffs have served 456 separate Requests for Admissions on Defendants in this matter seeking similar factual information from Defendants. In fairness, Plaintiffs should provide responses to this Interrogatory.

Requests for Production: In response to Defendants' Requests for Production from the thirty-one (31) individual plaintiffs, Plaintiffs produced thirty-three (33) pages of documents, including a number of blank pages. This production consists of six e-mail alerts from various advocacy groups that only briefly mention the redistricting process, one publicly-available newspaper article describing the instant lawsuit, photocopies of plaintiffs Claude Harris III's and Vanessa Martin's NAACP membership cards and related mission statements, and one email, with attachment, to plaintiff Milo Pyne regarding generic talking points for an upcoming redistricting public hearing.

Based on the broad requests and the number of individual plaintiffs responsible for producing relevant documents, Plaintiffs' discovery responses appear substantially deficient and require supplementation. By way of example, in response to Interrogatory #3, twelve (12) plaintiffs indicated they have been involved in some way with a number of advocacy organizations. Request for Production #3 seeks documents relating to or reflecting involvement in these advocacy organizations. Plaintiffs' production, though, lacks documents evidencing these involvements for the majority of the twelve plaintiffs who indicated involvement. For example, one would expect to see documents such as membership cards, records of dues paid or contributions made, and similar documents with respect to these Plaintiffs. These examples are merely illustrative of the deficiency that we believe exists with respect to this response and are not exhaustive since Defendants do not know what additional documents, if any, Plaintiffs may have in their possession.

Please confirm that Plaintiffs have conducted meaningful searches of their electronically stored information and email archives by providing the databases searched, the custodians searched, search terms used, and any limitations to the searches. To the extent Plaintiffs are withholding any materials, provide an appropriate log identifying the information or materials withheld and the basis for withholding these materials.

Request for Production #1: Request for Production #1 seeks documents regarding each Plaintiff's responsibility for paying attorney's fees and costs in this litigation. Plaintiffs have objected to this request on the grounds that it seeks attorney-client privileged information and that it is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiffs have not shown how the information sought in this request infringes on plaintiffs' attorney-client privilege. As with Interrogatory # 6 above, the documents sought are relevant to the issue of how each individual plaintiff became involved in this lawsuit, their reasons for doing so, and defenses that have been raised by Defendants to the claims asserted in this matter.

February 1, 2016
Page 4

Ogletree
Deakins

Thank you in advance for your prompt attention to these issues. Please do not hesitate to contact me should we need to discuss any matter raised in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. McKnight". The signature is fluid and cursive, with the first name "Michael" and last name "McKnight" clearly distinguishable.

Michael D. McKnight

MDM:pd1

23630186.1

EXHIBIT 5

From: Farr, Thomas A.
Sent: Tuesday, February 09, 2016 9:32 AM
To: Speas, Edwin M.; Anita Earls
Cc: Strach, Phillip J.; McKnight, Michael D.; Lawler, Patrick
Subject: FW: draft 30b6 notice

Dear Eddie and Anita

Defendants have asserted a claim preclusion defense in this case. This defense applies if there is privity between the Covington plaintiffs and the Dickson plaintiffs. Privity can exist when there is common control in the two cases.

In depositions taken within the last week we have discovered that the Covington plaintiffs were recruited by the SCSJ or the Democratic Party or agents of the Democratic party including someone who was a plaintiff in Dickson. This is similar to the testimony given by the Harris plaintiffs. All of the plaintiffs in Covington who have responded to a written interrogatory seeking the identity of the party or parties responsible for the payment of attorneys' fees and costs or who have been asked a similar question in a deposition have all stated that they do not know who is responsible for the payment of the attorneys' fees and costs in the Covington matter.

Given the foregoing and other testimony and in light of the truncated discovery period ordered by the court, attached are two 30b6 notices for Poyner and SCSJ.

The issues listed in the notices are relevant to our defense and at the moment we are not aware of anyone else we can depose to discover this information.

We will not serve these notices at this point unless you agree to accept them and provide a witness who will answer questions on the listed topics. Alternatively, if you can name witnesses who can fully answer questions related to the issues in the notices, we would agree not to issue the 30b6 notices and depose those witnesses.

If neither option is acceptable, we will not serve the notices now but instead will file a motion with the court asking that we be allowed to serve these notices and take the depositions. We will request that the court shorten the time for you to respond to our motion to 5 working days.

Please let me know if any of these options are acceptable or if we should proceed to file our motion. Given the amount of time left in discovery, please let us know of your position on our request by the close of business today.

Thank you for your consideration.

Tom

Thomas A. Farr | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3174 | Mobile: 919-693-6241
thomas.farr@ogletreedeakins.com | www.ogletreedeakins.com | [Bio](#)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
THE STATE OF NORTH CAROLINA,)	
<i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS' JOINT NOTICE OF RULE 30(b)(6) DEPOSITION OF POYNER
& SPRUILL, LLP**

TO ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendants in the above-captioned actions will take the deposition of one or more representative person(s) designated by the law firm of Poyner & Spruill, LLP ("Poyner & Spruill").

The deposition shall commence at _____ a.m. on _____, at the offices of Ogletree Deakins, 4208 Six Forks Road, Suite 1100, Raleigh, NC 27609, and shall continue day to day until completed unless otherwise agreed to by the parties. The deposition will be taken upon oral examination before an official authorized by law to administer oaths under the Federal Rules of Civil Procedure and will be recorded by sound and/or stenographic means and may also be recorded by additional audiovisual means.

The topics for the deposition will include the following:

1. The identities of any individual(s), group(s), and/or organization(s), including any plaintiffs, responsible for paying the legal fees and costs in *Dickson, et al. v. Rucho, et al.*, Nos. 11 CVS 16896 and 11 CVS 16940 ("*Dickson*").
2. The identities of any individual(s), group(s), and/or organization(s), including any plaintiffs, responsible for paying the legal fees and costs in the instant action ("*Covington*").
3. The identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for raising funds or assisting to raise funds to pay legal fees and costs in *Dickson*.
4. The identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for raising funds or assisting to raise funds to pay legal fees and costs in *Covington*.
5. The method(s) used to solicit individual contributions to pay for legal fees and costs in *Dickson* and the identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for making these solicitations.
6. The method(s) used to solicit individual contributions to pay for legal fees and costs in *Covington* and the identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for making these solicitations.
7. The identities of any individual(s), group(s), or organization(s) recruited and/or solicited to participate as a plaintiff in *Dickson* and if so the individual(s),

group(s), or organization(s) involved with recruiting and/or soliciting the identified parties.

8. The identities of any individual(s), group(s), or organization(s) recruited and/or solicited to participate as a plaintiff in *Covington* and if so the individual(s), group(s), or organization(s) involved with recruiting and/or soliciting the identified parties.
9. The identities of all plaintiffs in *Dickson* that initiated communications with Poyner & Spruill seeking to retain Poyner & Spruill as counsel, and identities of all *Dickson* plaintiffs with whom Poyner & Spruill and/or some other individual(s), group(s), or organization(s) initially contacted for purposes of the lawsuit.
10. The identities of all plaintiffs in *Covington* that initiated communications with Poyner & Spruill seeking to retain Poyner & Spruill as counsel, and identities of all *Covington* plaintiffs with whom Poyner & Spruill and/or some other individual(s), group(s), or organization(s) initially contacted for purposes of the lawsuit.
11. Whether the plaintiffs in *Dickson* were responsible for paying fees and costs and if not who was responsible.
12. Whether the plaintiffs in *Covington* are responsible for paying fees and costs and if not who will be responsible.

This the ____th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr

N.C. State Bar No. 10871

Phillip J. Strach

N.C. State Bar No. 29456

thomas.farr@ogletreedeakins.com

phil.strach@ogletreedeakins.com

4208 Six Forks Road, Suite 1100

Raleigh, North Carolina 27609

Telephone: (919) 787-9700

Facsimile: (919) 783-9412

Co-counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' JOINT NOTICE OF RULE 30(b)(6) DEPOSITION OF POYNER & SPRUILL, LLP** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Edwin M. Speas, Jr.
John W. O'Hale
Carolina P. Mackie
Poyner Spruill LLP
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
espeas@poynerspruill.com
johale@poynerspruill.com
cmackie@poynerspruill.com
Attorneys for Plaintiffs

Anita S. Earls
Allison J. Riggs
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
anita@southerncoalition.org
allisonriggs@southerncoalition.org
Attorneys for Plaintiffs

Adam Stein
Tin Fulton Walker & Owen, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
astein@tinfulton.com
Attorney for Plaintiffs

This the ____th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr
Thomas A. Farr
N.C. State Bar No. 10871
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Telephone: 919.787.9700
Facsimile: 919.783.9412
thomas.farr@odnss.com

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et al.*,)
)
Plaintiffs,)
)
v.)
)
THE STATE OF NORTH CAROLINA,)
et al.,)
)
Defendants.)

DEFENDANTS' JOINT NOTICE OF RULE 30(b)(6) DEPOSITION OF THE
SOUTHERN COALITION FOR SOCIAL JUSTICE

TO ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Defendants in the above-captioned actions will take the deposition of one or more representative person(s) designated by the Southern Coalition for Social Justice ("SCSJ").

The deposition shall commence at _____ a.m. on _____, at the offices of Ogletree Deakins, 4208 Six Forks Road, Suite 1100, Raleigh, NC 27609, and shall continue day to day until completed unless otherwise agreed to by the parties. The deposition will be taken upon oral examination before an official authorized by law to administer oaths under the Federal Rules of Civil Procedure and will be recorded by sound and/or stenographic means and may also be recorded by additional audiovisual means.

The topics for the deposition will include the following:

1. The identities of any individual(s), group(s), and/or organization(s), including any plaintiffs, responsible for paying the legal fees and costs in *North Carolina State Conference of Branches of the NAACP v. North Carolina*, Nos. 11 CVS 16896 and 11 CVS 16940 ("*NC NAACP*").
2. The identities of any individual(s), group(s), and/or organization(s), including any plaintiffs, responsible for paying the legal fees and costs in the instant action ("*Covington*").
3. The identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for raising funds or assisting to raise funds to pay legal fees and costs in *NC NAACP*.
4. The identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for raising funds or assisting to raise funds to pay legal fees and costs in *Covington*.
5. The method(s) used to solicit individual contributions to pay for legal fees and costs in *NC NAACP* and the identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for making these solicitations.
6. The method(s) used to solicit individual contributions to pay for legal fees and costs in *Covington* and the identities of any individual(s), group(s), and/or organization(s), including plaintiffs, responsible for making these solicitations.
7. The identities of any individual(s), group(s), or organization(s) recruited and/or solicited to participate as a plaintiff in *NC NAACP* and if so the individual(s),

group(s), or organization(s) involved with recruiting and/or soliciting the identified parties.

8. The identities of any individual(s), group(s), or organization(s) recruited and/or solicited to participate as a plaintiff in *Covington* and if so the individual(s), group(s), or organization(s) involved with recruiting and/or soliciting the identified parties.
9. The identities of all plaintiffs in *NC NAACP* that initiated communications with SCSJ seeking to retain SCSJ as counsel, and identities of all *NC NAACP* plaintiffs with whom SCSJ and/or some other individual(s), group(s), or organization(s) initially contacted for purposes of the lawsuit.
10. The identities of all plaintiffs in *Covington* that initiated communications with SCSJ seeking to retain SCSJ as counsel, and identities of all *Covington* plaintiffs with whom SCSJ and/or some other individual(s), group(s), or organization(s) initially contacted for purposes of the lawsuit.
11. Whether the plaintiffs in *NC NAACP* were responsible for paying fees and costs and if not who was responsible.
12. Whether the plaintiffs in *Covington* are responsible for paying fees and costs and if not who will be responsible.

This the ____th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr

N.C. State Bar No. 10871

Phillip J. Strach

N.C. State Bar No. 29456

thomas.farr@ogletreedeakins.com

phil.strach@ogletreedeakins.com

4208 Six Forks Road, Suite 1100

Raleigh, North Carolina 27609

Telephone: (919) 787-9700

Facsimile: (919) 783-9412

Co-counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' JOINT NOTICE OF RULE 30(b)(6) DEPOSITION OF THE SOUTHERN COALITION OF SOCIAL JUSTICE** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Edwin M. Speas, Jr.
John W. O'Hale
Carolina P. Mackie
Poyner Spruill LLP
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
espeas@poynerspruill.com
johale@poynerspruill.com
cmackie@poynerspruill.com
Attorneys for Plaintiffs

Adam Stein
Tin Fulton Walker & Owen, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
astein@tinfulton.com
Attorney for Plaintiffs

Anita S. Earls
Allison J. Riggs
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
anita@southerncoalition.org
allisonriggs@southerncoalition.org
Attorneys for Plaintiffs

This the ____th day of February, 2016.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr
Thomas A. Farr
N.C. State Bar No. 10871
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Telephone: 919.787.9700
Facsimile: 919.783.9412
thomas.farr@odnss.com

EXHIBIT 6

From: Anita Earls [mailto:AnitaEarls@southerncoalition.org]
Sent: Wednesday, February 10, 2016 9:19 AM
To: Farr, Thomas A.; Speas, Edwin M.
Cc: Strach, Phillip J.; McKnight, Michael D.; Lawler, Patrick; Allison Riggs
Subject: RE: draft 30b6 notice

Dear Tom,

I am responding on behalf of SCSJ and Poyner & Spruill. We have given your request careful consideration. We are not willing to accept service of the 30b6 notices attached to your email from yesterday. In our view the information you seek, and particularly the very broad questions you identify in the attachment to the notices, is not relevant to any issue of privacy and is not likely to lead to the discovery of relevant information. Moreover, we believe the information is attorney/client privileged information and that our clients have rights protected by the First Amendment to the US Constitution that require us to maintain the confidentiality of that information. We further reserve all other rights and privileges that may apply in these circumstances. Seeking to depose the Plaintiffs' counsel at this point in the litigation, less than two weeks before the end of the discovery period, seriously interferes with our ability to defend the many depositions already scheduled between now and February 19th, as well as interferes with our ability to prepare our case generally.

Without waiving any of our clients' rights and privileges, I will point out that as a non-profit public interest law organization, SCSJ's Form 990 provides all the information we are required to make public concerning the funding for our organization, including details of our fundraising activities. Our Form 990s for the last three fiscal years (2012-2014) are readily available on www.guidestar.org.

Sincerely,
Anita

Anita S. Earls
Executive Director
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101