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

SANDRA LITTLE COVINGTON, *et al.*, Plaintiffs, v. THE STATE OF NORTH CAROLINA, *et al.*, Defendants.	**NON-PARTY SCOTT FALMLEN'S MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA *DUCES TECUM* (Fed. R. Civ. P. 45(d)(3))**

NATURE OF THE MATTER

Mr. Scott Falmlen ("Mr. Falmlen"), by and through undersigned counsel, hereby submits the following Memorandum of Law in Support of his Motion to Quash the subpoena issued to him on April 4, 2016 (the "Subpoena") on grounds that the testimony that will be sought from him "subjects [Mr. Falmlen] to undue burden" and "requires disclosure of privileged or other protected matter." FED. R. CIV. P. 45(d)(3)(A). Specifically, based on the meet and confer required by Local Rule 37.1, counsel for Mr. Falmlen is informed and believes that Defendants will seek to elicit information regarding the identities of those who funded this and other redistricting litigation in violation of his and their First Amendment associational rights.

STATEMENT OF RELEVANT FACTS

Scott Falmlen is a Partner at Nexus Strategies, a political consulting group located in Raleigh, North Carolina. Mr. Falmlen is not a party to this lawsuit.

No Plaintiff in this action, either individually or collectively, has the financial resources to challenge the State. Mr. Falmlen has participated in efforts to fund this litigation. *See* Declaration of Scott Falmlen ("Falmlen Decl."), ¶ 3 (a copy of which is attached as Exhibit C). Specifically, Mr. Falmlen, through The Democracy Project II ("Democracy Project"), a 501(c)(4) nonprofit corporation which he formed in 2011, solicited financial contributions from individual and organizational donors, and distributed funds for the payment of Plaintiffs' legal fees. Falmlen Decl., ¶ 3. There is no single funder of this litigation. Falmlen Decl., ¶ 3. Contributors to the funding of this lawsuit were assured that their identifying information would remain confidential. Falmlen Decl., ¶ 4.

On April 4, 2016, Mr. Falmlen received the Subpoena commanding that he appear and testify at trial (a copy of which is attached as Exhibit A). The Subpoena does not specify the subject matter of Mr. Falmlen's purported testimony, nor does it request that Mr. Falmlen produce any documents.

On April 13, 2016, counsel for Mr. Falmlen met and conferred with counsel for Defendants, pursuant to Local Rule 37.1. *See* Certificate of Conference, attached to Mr. Falmlen's Motion to Quash. During that meeting, Defendants' counsel represented to Mr. Falmlen's attorney that Defendants intend to question Mr. Falmlen at trial about the identities of those who contributed funds to finance redistricting litigation in North

Carolina, those responsible for raising funds for or paying the legal bills for that redistricting litigation, and the methods used to raise such funds. *See id.*

The Subpoena represents Defendants' third attempt to seek discovery with respect to the funding of this litigation. The Court has already considered and rejected Defendants' two prior attempts.

The first of these attempts was Defendants' Motion for Leave to Depose Counsel for Plaintiffs. (D.E. 58) The notice of deposition attached to that motion indicated that Defendants sought to explore, among other topics, the identities of those responsible for raising funds for and/or paying the legal fees in this litigation, and the methods used to solicit individual contributions to pay for legal fees in this litigation (*see* D.E. 59-5, pp. 5–6, 10–11, a copy of which is attached as Exhibit B). The Court denied that motion. (*See* D.E. 69)

Defendants' second attempt to explore the funding of this litigation was their Motion to Modify Scheduling Order and to Expedite (D.E. 67), which requested leave of the Court to issue a subpoena and to take the deposition of Mr. Falmlen. Defendants sought to determine, *inter alia*, whether Mr. Falmlen was "responsible for the payment of any costs or fees" in this litigation." (D.E. 68, p. 5) The Court also denied that motion. (*See* D.E. 72)

QUESTION PRESENTED

MUST THE COURT QUASH THE SUBPOENA PURSUANT TO FRCP 45(d)(3) WHEN THE SUBPOENA IMPOSES AN UNDUE BURDEN ON MR. FALMLEN AND REQUIRES DISCLOSURE OF PRIVILEGED MATTER?

ARGUMENT

Rule 45 provides that "[a] party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." FED. R. CIV. P. 45(d)(1) (emphasis added). On those occasions when such "reasonable steps" are not taken—as is the case here—Rule 45 offers protections to the party who received the unduly burdensome subpoena, including quashing the subpoena and an award of attorneys' fees.

Rule 45 lists specific grounds for quashing a subpoena. The rule requires the Court to quash a subpoena that, *inter alia*, "subjects a person to undue burden" or "requires disclosure of privileged or other protected matter." FED. R. CIV. P. 45(d)(3)(A).

In this case, the Subpoena runs afoul of these two prohibitions. Mr. Falmlen therefore asks that the Court quash it in its entirety.

I. THE SUBPOENA IMPOSES AN UNDUE BURDEN ON MR. FALMLEN

Rule 45(d)(3) requires a court to quash a subpoena that "subjects a person to an undue burden." FED. R. CIV. P. 45(d)(3)(A)(iv); *see also Cook v. Howard*, 484 Fed. Appx. 805, 812 n.7 (4th Cir. 2012). In analyzing whether a subpoena imposes an "undue burden" on a third party, Rule 45 requires courts to "weigh the burden to the subpoenaed

party against the value of the information to the serving party," and, in so doing, consider "the relevance of the discovery sought, the requesting party's need, and the potential hardship to the party subject to the subpoena." *Schaaf v. Smithkline Beecham Corp*., 233 F.R.D. 451, 453 (E.D.N.C. 2005) (*quoting Heat & Control, Inc. v. Hester Indus.*, 785 F.2d 1017, 1024 (Fed. Cir. 1986)). "In the context of evaluating subpoenas issued to third parties, a court 'will give extra consideration to the objections of a non-party, non-fact witness in weighing burdensomeness versus relevance.'" *Indem. Ins. Co. of N. Am. V. Am. Eurocopter LLC*, 227 F.R.D. 421, 426 (M.D.N.C. 2005).

Mr. Falmlen's purported testimony is irrelevant to any issue in this case. Defendants' motivation in seeking to explore the funding of this litigation is to pursue their *res judicata* theory, which requires privity between the state-court plaintiffs and Plaintiffs in this litigation, or an applicable exception. In determining whether the exception to privity exists, courts employ a test that requires a showing, *inter alia*, that a non-party exercised "control" of the original lawsuit and the present lawsuit. *See Thompson v. Lassiter*, 246 N.C. 34, 39, 97 S.E.2d 492, 496 (1957).

In the course of months of discovery and over 40 depositions taken by Defendants, there has been zero evidence adduced that any of the Plaintiffs in this case share identity or privity with the plaintiffs in an earlier lawsuit. Defendants have yet to explain how additional testimony from Mr. Falmlen might be relevant to the privity inquiry. Mr. Falmlen will testify that he has solicited and received financial contributions from various

individuals and entities to support redistricting litigation, and that those litigations have no single funder. Even assuming, *arguendo*, that some donors who financially supported other pending lawsuits also made donations to support this litigation, that fact would not suffice to establish privity. *See Troy Lumber Co. v. Hunt*, 251 N.C. 624, 112 S.E.2d 132 (1960) (finding that a shareholder could not be said to exert control over a case where the company in which he held shares was a party).

Moreover, Defendants have not demonstrated any need for information regarding the funding of this lawsuit. Defendants have attempted on two prior occasions to elicit discovery with respect to the funding of this litigation, and the court has rejected each of those attempts, noting Defendants' failure to make a sufficient showing to support their requests. (*See* D.E. 69, 72) It is Mr. Falmlen's understanding that, as of this filing, Defendants have made no additional representations to the Court or to Plaintiffs that might demonstrate a need for this information.

Defendants' insistence on chasing their attenuated *res judicata* theory imposes an unjustified hardship on Mr. Falmlen, a non-party. Mr. Falmlen has been forced to expend his own time and resources to hire counsel and will have to travel to Greensboro, NC to testify at a trial for which he can provide no relevant evidence. Having failed to demonstrate any need for Mr. Falmlen's testimony, this burden on Mr. Falmlen is undue.

II. THE SUBPOENA SEEKS THE DISCLOSURE OF PRIVILEGED INFORMATION THAT, IF DISCLOSED, WOULD INFRINGE UPON THE FIRST AMENDMENT ASSOCIATIONAL RIGHTS OF MR. FALMLEN AND OTHER CONTRIBUTORS

The Subpoena also violates Rule 45 because it requires the disclosure of privileged information. FED. R. CIV. P. 45(d)(3)(A)(iii). Specifically, disclosure of information regarding the funding of this lawsuit would infringe upon the First Amendment associational rights of Mr. Falmlen and other contributors to this litigation.

As the U.S. Supreme Court has made clear, "[i]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the . . . freedom of speech." *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958). "Compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . a restraint on freedom of association." *Id.* at 462. Thus, a "vital relationship" exists "between freedom to associate and privacy in one's associations." *Id.* at 461.

Based on the principles of *NAACP v. Alabama*, federal courts recognize that the First Amendment creates a qualified privilege from disclosure of certain associational information. *See NAACP*, 357 U.S. at 462. Such information includes association membership lists (*NAACP*, 357 U.S. at 462), campaign contributions (*Buckley v. Valeo*, 424 U.S. 1 (1976)), communications with trade associations and government agencies (*In re Motor Fuel Temperature Sales Practices Litig.*, 641 F.3d 470, 479–81 (10th Cir. 2011)), internal campaign communications relating to campaign strategy and advertising

(*Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010)), and financial statements of contributions to associations (*Bates v. Little Rock*, 361 U.S. 516 (1960)).

To determine whether the privilege applies, courts balance the interest in disclosure and the burden imposed on association. *See Anderson v. Hale*, 2001 U.S. Dist. LEXIS 6127, at *10 (N.D. Illinois, May 10, 2001) (and cases cited therein). The party asserting the privilege must first "demonstrate an objectively reasonable probability that compelled disclosure will chill associational rights." *In re Motor Fuel Temperature Sales Pracs. Litig.*, 707 F. Supp. 2d 1145, 1153 (D. Kan. 2010) (*citing NAACP*, 357 U.S. at 462–63; *Perry*, 591 F.3d at 1160). Upon a sufficient showing of infringement, courts shift the burden to the party seeking disclosure to "demonstrate[] an interest in obtaining the disclosures . . . which is sufficient to justify the deterrent effect" on the affected party's exercise of associational rights. *Perry*, 591 F.3d at 1140 (*quoting NAACP*, 357 U.S. at 463).

Whether the government or a private party is seeking disclosure of associational information, the Court applies a heightened standard of scrutiny, which requires that the party seeking disclosure have a compelling interest in disclosure, and that the interest bears a substantial relation to the information sought. *NAACP*, 357 U.S. at 463–66. In conducting the compelling interest/substantial relation inquiry, courts consider various factors, including: (1) the relevance of the information sought; (2) the need for the information; (3) whether the information is available from other sources; (4) the nature of

the information sought; and (5) whether the party asserting the privilege has placed the information in issue. *See, e.g.*, *In re Motor Fuel Temperature Sales Practices Litig*., 707 F. Supp. 2d at 1153; *Anderson*, 2001 U.S. Dist. LEXIS 6127, at *11 (N.D. Ill., May 5, 2001). As the court in *Anderson* explained, meeting this heightened standard is "no easy task." *Anderson*, 2001 U.S. Dist. LEXIS 6127, at *12. Indeed, "the inquiring party must show that the information sought is so relevant that it goes to the heart of the matter; that is, the information is crucial to the party's case." *Id.* (emphasis added); *see also Black Panther Party v. Smith*, 661 F.2d 1243, 1268, *cert. granted and vacated as moot*, 458 U.S. 1118 (1982) ("Mere speculation that information might be useful will not suffice; litigants seeking to compel discovery must describe the information they hope to obtain and its importance to their case with a reasonable degree of specificity.").

A. The Associational Activities of Mr. Falmlen and Other Financial Contributors Are Protected by the First Amendment.

Courts have recognized that information about a person's financial contributions fall within the purview of the First Amendment associational privilege. Indeed, "[t]he invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations because the financial transactions can reveal much about one's activities, associations, and beliefs." *Marshall v. J. P. Stevens Employees Educ. Comm*., 495 F. Supp. 553, 557–58 (E.D.N.C. 1980) (*citing Buckley*, 424 U.S. at 66 (recognizing that compelled disclosure of campaign contributor lists may constitute an effective restraint on freedom of

association)); *see also Bates v. Little Rock*, 361 U.S. 516 (1960) (membership lists and financial contributions).

In *Tree of Life Christian Schools v. City of Upper Arlington*, a private religious school brought various claims against the defendant city, including violation of the Religious Land Use and Institutionalized Persons Act. 2012 U.S. Dist. LEXIS 32205 (S.D. Ohio, March 12, 2012). During discovery, the city sought the identity of one of the school's donors in order to depose that donor. *Id.* at *1. The donor had contributed $6.5 million to the purchase price of the school property on the condition that his/her identity would remain confidential. *Id.* at *2. Yet, the city argued that the information sought was relevant to show that it had not imposed a substantial burden on plaintiff's religious exercise. *Id.* at *10.

The school challenged the discovery request, maintaining that the disclosure of the donor's identity would violate its First Amendment right to association. *Id.* at *3. It argued that the disclosure of the identity, as well as the deposition testimony the city sought, would "alter, and put at risk, the relationship between the [school] and its donor and may jeopardize future donations from this donor and others." *Id.* at *3–4. The district court agreed with the plaintiff school, concluding that the school had demonstrated a "reasonable probability that the disclosure . . . [would] have a chilling effect on the Plaintiff's First Amendment associational rights." *Id.* at *9. In so holding, the court explained that it was "highly possible, if not probable" that public knowledge of

the donor's identity would hinder the school's ability to raise funds in the future. *Id.* It also noted that because the donation was made on the condition of confidentiality, the disclosure would "almost certainly put at least some strain on the relationship between the Plaintiff and its donor." *Id.* at *9–10.

The court weighed this possible chilling effect against Defendant's interest in establishing its "substantial burden" defense. *Id.* at *10–12. The court concluded that Defendant had not shown that this information was necessary to its ability to raise the defense, and thus the information was not "crucial to Defendant's case." *Id.* at *11. Accordingly, the court denied the city's discovery request. *Id.* at *13.

Similarly, in *Marshall*, the Secretary of Labor served subpoenas on the J.P. Stevens Employees Education Committee (the "Committee"), an anti-union group that was involved in a prolonged labor dispute with a textile workers union. *Marshall v. J. P. Stevens Employees Educ. Comm.*, 495 F. Supp. 553, 557–58 (E.D.N.C. 1980). The Secretary believed that a private company had made undisclosed payments to the Committee in violation of the Labor Management Reporting and Disclosure Act, and the subpoenas sought, *inter alia*, a list of the Committee's contributors and other financial records regarding these contributions. *Id.* at 558. The court granted the motion to quash the subpoena, finding that the appellees' "freedom to come together in privacy for the purpose of developing their ideas and to received confidential contributions" outweighed

"the government interest in fairness and above-board dealings during a labor conflict." *Id.* at 564.

On appeal, the Fourth Circuit court affirmed the district court's finding that the disclosure of "information about individuals and organizations who had contributed money to the Committee" would have a chilling effect on the contributors' associational rights. *Marshall v. Stevens People & Friends for Freedom*, 669 F.2d 171, 178 (4th Cir. 1981). It stated: "Undoubtedly . . . compelled production of this information has the potential for deterring legitimate contributions to [the Committee], and to this extent it creates the possibility of infringement of the [the Committee's] first amendment rights of association and advocacy." *Id.* at 178. However, the Fourth Circuit court reversed the lower court's decision with respect to the balancing of interests. It found that the government's countervailing interest in identifying and eliminating corruption and other illegal activity in the labor-management field outweighed the possibility of infringement on appellees' associational rights. *Id.* at 178–79. (*See infra*, Section II.B., explaining that the Defendants in this case have not asserted any such countervailing interest in this litigation, much less an interest as compelling as preventing illegal activity.)

Here, Mr. Falmlen and the funders of this lawsuit have a significant interest in maintaining the privacy of their financial associations. Like the donor and Committee contributors in *Tree of Life* and *Marshall*, respectively, Mr. Falmlen and the funders of this litigation have a "right to come together in privacy for the purpose of developing

their ideas and to receive confidential contributions." *See Marshall*, 495 F. Supp. at 564. Moreover, like the donor in *Tree of Life*, the funders of this litigation made donations to the Democracy Project on the ground that they were doing so anonymously and confidentially. *See* Falmlen Decl., ¶ 4. Thus, it is not only probable that disclosure of the funders' identifying information will hinder Mr. Falmlen's future fundraising efforts, but also that it will put "some strain on the relationship" between Mr. Falmlen and the Democracy Project contributors. *See Tree of Life*, 2012 U.S. Dist. LEXIS 32205, at *10. Indeed, compelling the disclosure of information regarding the funding of this litigation has the potential for significant chilling effects on Mr. Falmlen's associational activities, as well as those of his contributors. *See* Falmlen Decl., ¶ 4.

B. Defendants Do Not Have a Compelling Interest Which Justifies Infringing Upon Protected Associational Rights.

In addition, Defendants have not met their high burden of showing a compelling interest in disclosure that is substantially related to the information it seeks from Mr. Falmlen. *See NAACP*, 357 U.S. at 463–66. Indeed, Defendants have asserted no interest which justifies the infringement of private associational rights. *Cf. Marshall*, 669 F.2d at 178 (finding that the government's interest in identifying and preventing illegal activity outweighed infringement on associational rights); *Gibson v. Florida Leg. Investigation Comm.*, 372 U.S. 539, 545 (1963) (finding that the government's interest in conducting legislative investigations "concerning the administration of existing laws as well as proposed or possibly needed statutes" outweighed infringement on associational rights).

To the extent Defendants are still seeking discovery to support their attenuated *res judicata* theory, such interest does not outweigh the possible infringement on first amendment rights: just as the defendant in *Tree of Life* failed to establish that its "substantial burden" defense was "crucial" to its case, Defendants here have not demonstrated that the information it seeks from Mr. Falmlen is necessary to its ability to establish its *res judicata* theory. *See Tree of Life*, 2012 U.S. Dist. LEXIS 32205, at *11. Even if Defendants were able to assert some interest in compelling Mr. Falmlen's testimony, they would have to prove that the information sought "is so relevant that it goes to the heart of the matter" in this case, an exacting standard that Defendants simply cannot meet. *See Anderson*, 2001 U.S. Dist. LEXIS 6127, at *12.

Because Defendants' Subpoena threatens to infringe upon Mr. Falmlen's associational rights and those of his contributors by eliciting information about the funding of this litigation, and because Defendants have demonstrated zero need for this information—much less a "compelling interest" that is "substantially related to the information sought"—the Court should recognize Mr. Falmlen's First Amendment privilege against compelled disclosure of this information and, accordingly, quash the Subpoena.

III. THE SANCTION REQUIREMENT OF RULE 45(d)(1)

It is not the obligation of the Court, faced with an unduly burdensome subpoena, to re-write it for the party who caused it to issue. To the contrary, the Court should quash

it and, in accordance with Rule 45(d)(1), award Mr. Falmlen's costs: "The Court . . . must enforce this duty [to avoid imposing undue burden or expense on a person subject to a subpoena] and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or the attorney who fails to comply." FED. R. CIV. P. 45(d)(3)(A).

CONCLUSION

Defendants' Subpoena ignores the requirement of Rule 45(d)(1) to "take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena." For that reason, and for all of the reasons detailed above, Mr. Falmlen asks that the Court quash the Subpoena in its entirety and award Mr. Falmlen his reasonable costs and attorneys' fees incurred in filing this Motion as required by Rule 45(d)(1).

Respectfully submitted, this the 14th day of April, 2016.

/s/ Jim W. Phillips, Jr.

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Attorney for Scott Falmlen

CERTIFICATE OF SERVICE

I, Jim W. Phillips, Jr., hereby certify that I have this day electronically filed the foregoing NON-PARTY SCOTT FALMLEN'S MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENA *DUCES TECUM* with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 14th day of April, 2016.

/s/ Jim W. Phillips, Jr.
Jim W. Phillips, Jr.

EXHIBIT A

AO 88 (Rev. 02/14) Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

UNITED STATES DISTRICT COURT

for the

MIDDLE DISTRICT OF NORTH CARC

SANDRA LITTLE COVINGTON, et al.,
Plaintiff
v.
STATE OF NORTH CAROLINA, et al.,
Defendant

Civil Action No. 1:15-CV-00399

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A CIVIL ACTION

To: Mr. Scott Falmlen

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place set forth below to testify at a hearing or trial in this civil action. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: U.S. District Court for the Middle District of N.C. 324 W. Market Street Greensboro, N.C. 27401	Courtroom No.: 3 Date and Time: 04/15/2016 10:00 am

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/04/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

/s/ Michael D. McKnight
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Defendants , who issues or requests this subpoena, are:

Michael D. McKnight, Ogletree Deakins Nash Smoak & Stewart, P.C., 4208 Six Forks Road, Suite 1100; (p) 919.789.1359; michael.mcknight@ogletreedeakins.com.

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

EXHIBIT B

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 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
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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:

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This the _____th day of February, 2016.

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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
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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:

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This the ___th day of February, 2016.

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

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EXHIBIT C

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

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

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

Defendants.

DECLARATION

OF

SCOTT FALMLEN

COMES NOW, Scott Falmlen:

1. My name is Scott Falmlen. I am an adult and under no disability. I have personal knowledge of the matters set forth herein, unless otherwise specifically indicated.

2. I am a resident of Raleigh, North Carolina.

3. In 2011 I formed The Democracy Project II, a 501(c)(4) non-profit corporation. Since then, I have solicited and raised funds on behalf of The Democracy Project II from private individuals and entities, a portion of which has been used to pay legal fees associated with redistricting litigation in North Carolina. Other individuals and entities not associated with The Democracy Project II, have also solicited and raised funds for this purpose.

4. In connection with my fundraising efforts, I have consistently assured donors and potential donors that their identities would be confidential. I am confident that certain of the donors would not have contributed without that assurance. I am also confident that disclosure of the identities of certain of those donors would chill their willingness to participate in future advocacy activities.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 13 2016.

Scott Falmlen