

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SHAUNA WILLIAMS, et al.,

*Plaintiffs,*

v.

REPRESENTATIVE DESTIN HALL, in his  
official capacity as Chair of the House Standing  
Committee on Redistricting, et al.,

*Defendants.*

Civil Action No. 23 CV 1057

---

NORTH CAROLINA STATE CONFERENCE OF  
THE NAACP, et al.,

*Plaintiffs,*

v.

PHILIP BERGER, in his official capacity as the  
President Pro Tempore of the North Carolina  
Senate, et al.,

*Defendants.*

Civil Action No. 23 CV 1104

**NAACP PLAINTIFFS' SURREPLY IN OPPOSITION TO**  
**LEGISLATIVE DEFENDANTS' MOTION FOR**  
**PARTIAL SUMMARY JUDGMENT**

Pursuant to Local Rule 7.6,<sup>1</sup> NAACP Plaintiffs respectfully submit this Surreply in opposition to Legislative Defendants’ Motion for Partial Summary Judgment, Doc. 78, to specifically address the evidentiary objections newly raised on pages 3–4 of the Reply brief, Doc. 86 (“Reply”).<sup>2</sup>

In their Reply, Legislative Defendants (hereafter, “Defendants”) raise evidentiary objections predicated on the erroneous assertion that testimony from representatives of the Associational Plaintiffs as to their standing members is inadmissible. Their arguments misconstrue the requirements of the Federal Rules of Evidence and reflect yet another attempt by Defendants to impose an unprecedented burden on parties asserting associational standing. Defendants’ arguments fail for at least four reasons.

*First*, Federal Rule of Evidence 1002 does not bar the testimony of Associational Plaintiffs’ representatives as to the identity of their members. This is because they are testifying to the existence of membership itself, and not the content of any specific writing (such as the terms of a contract) in dispute. Defendants’ attempt to argue otherwise misconstrues the scope and intent of the Federal Rules.

The Fourth Circuit explained at length in *United States v. Smith* why such testimony is admissible and why efforts to exclude such testimony “rest on a misconception of the

---

<sup>1</sup> See, e.g., *Neal v. Sandhills Ctr.*, 737 F. Supp. 3d 291, 293 n.1 (M.D.N.C. 2024) (considering surreply filed pursuant to Local Rule 7.6); *CIP Constr. Co. v. W. Sur. Co.*, No. 1:18cv58, 2018 U.S. Dist. LEXIS 122664, at \*22–24 (M.D.N.C. July 20, 2018) (considering surreply when required by fairness to address arguments newly raised in a Reply). NAACP Plaintiffs have limited this Surreply to addressing Defendants’ newly-raised evidentiary objections, consistent with Local Rule 7.6, and do not concede any other points raised in Defendants’ Reply.

<sup>2</sup> All other defined terms herein have the same meaning as in NAACP Plaintiffs’ Response in Opposition to Legislative Defendants’ Motion for Partial Summary Judgment, Doc. 82.

‘best evidence rule’ and Rule 1002.’ 566 F.3d 410, 413 (4th Cir. 2009). In *Smith*, the Fourth Circuit held that Rule 1002 did not bar testimony from a witness who had consulted a computer database and books to reach his conclusion about the place of manufacture for a firearm:

In this case, the government never sought to prove the content of any writing or recording relating to the firearms or their places of manufacture. It sought only to prove *the fact* that the firearms were manufactured in States other than North Carolina, where they were recovered during the search of Smith’s apartment. The place of the firearms’ manufacture was a fact existing independently of the content of any book, document, recording, or writing. Just because Special Agent Cheramie consulted books and computer databases in reaching his conclusion about the firearms’ place of manufacture does not mean that his testimony was offered to prove the content of the books and computer files. Accordingly, Rule 1002 did not require submission of the books and computer files into evidence.

*Id.* at 413–15 (internal quotation marks and citations omitted) (emphasis in original).

Likewise, here the Associational Plaintiffs’ representatives are testifying to the fact of membership by certain individuals, not the specific content of any document. *See also* Fed. R. Evid. 1002 Advisory Committee’s Note to 1972 proposed rules (“Thus an event may be proved by nondocumentary evidence, even though a written record of it was made. If, however, the event is sought to be proved by the written record, the rule applies. For example, payment may be proved without producing the written receipt which was given.”). This is entirely distinguishable from the unproduced mortgage note in the case relied upon by Defendants, *In re Pfister*, which involved the terms of an alleged written contract that dictated the obligations of one of the parties in a bankruptcy suit. 749 F.3d 294, 300 n.4 (4th Cir. 2014). Rule 1002 does not bar testimony (including by sworn

affidavit) of the identification of members, or the fact of their membership, by Associational Plaintiffs' representatives.

*Second*, assuming (*arguendo*) that Defendants were correct as to the applicability of Rule 1002, it would not bar the testimony here because Associational Plaintiffs' representatives testified to having personal knowledge of individuals serving as standing members outside of their review of organizational records. *See* Ex. 1 at 120:3–13 (Maxwell Vol. 1, NC NAACP); Ex. 2 at 163:03–21 (Maxwell Vol. 2); Ex. 3 at 166:03–168:09, 267:04–269:05, 276:17–24 (Phillips, Common Cause); *see, e.g., Christian Emps. All. v. United States Equal Opportunity Comm'n*, 719 F. Supp. 3d 912, 920–22 (D.N.D. 2024) (finding organization's president had personal knowledge of members and their membership as attested to in president's affidavits that were admissible to demonstrate associational standing). And, as Federal Rule of Civil Procedure ("FRCP") 30(b)(6) designees, these representatives may further develop personal knowledge by "compiling and assimilating information gleaned from many sources." *City of Huntington v. AmerisourceBergen Drug Corp.*, No. 3:17-01362, 2022 U.S. Dist. LEXIS 26997, at \*20 (S.D. W. Va. Feb. 15, 2022) (internal quotations and citations omitted). In fact, the failure of an FRCP 30(b)(6) witness to adequately review documents containing the entity's knowledge, for the purpose of providing admissible testimony, would be contrary to the specific purpose and intent of the Federal Rules. *See, e.g., U.S. v. Taylor*, 166 F.R.D. 356, 361 (M.D.N.C. 1996) (noting obligation of a corporation to prepare its designee "to the extent matters are reasonably available, whether from documents, past employees, or other sources"). Likewise, Defendants' implication that declarations by standing members

themselves should be required to demonstrate associational standing, Reply at 4, would defeat the purpose of allowing associational standing in the first place.

*Third*, Defendants fail to cite any case in which a court has required an organization to enter membership records into evidence in order to admit testimony as to the identity of standing members. That is because there is no such requirement. Defendants' argument that NAACP Plaintiffs must establish associational standing using documentary membership records is entirely without merit.

As an initial matter, Defendants' argument that documentary membership records are required to establish associational standing contradicts the doctrine of associational standing itself. The Supreme Court has recognized that even where an organization has no members, it may still have associational standing where the organization's relationship with harmed individuals poses the "indicia of membership in an organization." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 344 (1977). If an organization may successfully assert associational standing without even having traditional members, it goes without saying that documentary evidence of membership is not and cannot be a prerequisite to associational standing. *See, e.g., Sec. Indus. & Fin. Mkts. Ass'n v. U.S. Commodity Futures Trading Comm'n*, 67 F. Supp. 3d 373, 410 (D.D.C. 2014) ("Plaintiffs are correct that the associational standing doctrine does not limit an association's membership to those listed on its membership rolls.").

Furthermore, where evidence of specific members is offered, the testimony of an organizational representative is routinely used to establish membership for purposes of associational standing. *See, e.g., McClure v. Jefferson Cnty. Comm'n*, No. 2:23-cv-00443,

2025 U.S. Dist. LEXIS 8226, at \*35-36 (N.D. Ala. Jan. 10, 2025) (NAACP President testimony sufficient to establish organization had members in each challenged district); *Ohio A. Philip Randolph Inst. v. Householder*, 367 F. Supp. 3d 697, 731 (S.D. Ohio 2019) (testimony submitted by plaintiff organizations sufficient to establish existence of members in challenged districts for purposes of associational standing); *Common Cause Fla. v. Byrd*, 726 F. Supp. 3d 1322, 1358–59 & n.2 (N.D. Fla. 2024) (testimony of organizational representative sufficient to demonstrate existence of members in challenged districts); *Nairne v. Ardoin*, No. 22-178, 2023 U.S. Dist. LEXIS 203477, at \*11–13 (M.D. La. Nov. 14, 2023) (testimony and declaration of NAACP President and membership names provided under seal sufficient to establish existence of members in each challenged district); *Apalachicola Riverkeeper v. Taylor Energy Co., L.L.C.*, 113 F. Supp. 3d 870, 876 (E.D. La. 2015) (affidavit and deposition testimony sufficient to create genuine dispute of material fact as to membership standing). Proving membership this way makes sense, as the direct participation of members is not a requirement for associational standing, *Hunt*, 432 U.S. at 343, and testifying to the organizational activities of members is well within the competency of an organizational representative. *See Common Cause Fla.*, 726 F. Supp. 3d at 1355 (finding defendant’s arguments that NAACP needed to produce a membership list to establish membership “unpersuasive”). NAACP Plaintiffs’ submissions as to their organizational standing are squarely in the heartland of this doctrine.

*Fourth*, Defendants’ hearsay challenge to Associational Plaintiffs’ testimony of permission received from standing members is also misplaced. As noted above, both organizational representatives have interacted with members, and they also participated in

the process of identifying them and obtaining permissions, Ex. 1 at 83:15–85:9, 90:3–14 (Maxwell Vol. 1, NC NAACP); Ex. 3 at 166:03–168:09, 174:01–05, 175:03–176:19, 203:24–204:11, 243:01–06, 276:17–24 (Phillips, Common Cause), thus developing requisite personal knowledge to testify as FRCP 30(b)(6) witnesses. More to the point, the receipt of information from another person is an act, not a statement, and thus not hearsay. *See United States v. Briscoe*, No. RDB-20-0139, 2022 U.S. Dist. LEXIS 85590, at \*8–9 (D. Md. May 11, 2022) (holding that it was not hearsay for a witness to testify a defendant authorized the murders of the victims). Here, the organizational representatives did not attest to what any member specifically *said*—but rather reported what certain members *did*, which was authorize the use of their residence for standing and production of their voting records in this matter. As the declarations contain statements of standing members’ acts, the references to those acts are not hearsay.

Even if the challenged testimony could be considered “statements,” the information need not be offered for the truth of the matter asserted here. This testimony principally informs that Associational Plaintiffs *sought* permission from standing members as part of their organizational process; the fact that members consented to reliance on their membership and production of their voting records is not a requirement for standing. *See Youse v. Duke Energy Corp.*, No. 1:02CV00808, 2003 U.S. Dist. LEXIS 26573 at \*4–5 (M.D.N.C. Dec. 15, 2003) (holding an employer’s reasons for termination were not hearsay because their truth was irrelevant to employment discrimination claim). NAACP Plaintiffs need not offer that information for its truth, and thus the challenged statement within the context of its relevance is not hearsay.

Accordingly, the Court should reject Defendants' evidentiary objections that urge an unprecedented and inappropriate standard for associational standing as meritless and deny summary judgment in favor of Defendants because testimony from representatives of the Associational Plaintiffs demonstrating their standing members is admissible.<sup>3</sup>

## CONCLUSION

Defendants' Motion for Partial Summary Judgment should be denied for the reasons articulated above, addressing Defendants' meritless evidentiary objections newly raised in their Reply, and for the reasons set forth in NAACP Plaintiffs' Response in Opposition, Doc. 82.

Dated: January 24, 2025

Respectfully submitted,

*/s/ Hilary Harris Klein*

---

Hilary Harris Klein

### HOGAN LOVELLS US LLP

J. Tom Boer\*  
Olivia Molodanof\*  
Madeleine Bech\*  
4 Embarcadero Center, Suite 3500  
San Francisco, CA 94111  
Telephone: 415-374-2300  
Facsimile: 415-374-2499  
tom.boer@hoganlovells.com  
olivia.molodanof@hoganlovells.com

Jessica L. Ellsworth\*

### SOUTHERN COALITION FOR SOCIAL JUSTICE

Jeffrey Loperfido (State Bar #52939)  
Hilary Harris Klein (State Bar #53711)  
Christopher Shenton (State Bar #60442)  
Mitchell D. Brown (State Bar #56122)  
Lily Talerman (State Bar #61131)  
5517 Durham Chapel Hill Blvd.  
Durham, NC 27707  
Telephone: 919-794-4213  
Facsimile: 919-908-1525  
hilaryhklein@scsj.org

---

<sup>3</sup> The U.S. Supreme Court has instructed that, where courts have expressed doubt as to the sufficiency of an organizational plaintiff's submissions supporting their associational standing, courts should provide those organizations the opportunity to submit further proof of their standing, rather than grant summary judgment. *See, e.g., Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 271 (2015) (noting an organizational plaintiff may supplement the record in a racial gerrymandering case by filing a list of its members in each of the challenged districts' response to a standing challenge); *see also id.* (collecting Supreme Court cases where affidavits were allowed in similar circumstances).



Misty Howell\*  
Odunayo Durojaye\*  
555 Thirteenth Street, NW  
Washington, DC 20004  
Telephone: 202-637-5600  
Facsimile: 202-637-5910  
jessica.ellsworth@hoganlovells.com

jeffloperfido@scsj.org  
chrisshenton@scsj.org  
mitchellbrown@scsj.org  
lily@scsj.org

Harmony Gbe\*  
1999 Avenue of the Stars, Suite 1400  
Los Angeles, CA 90067  
Telephone: 310-785-4600  
Facsimile: 310-785-4601  
harmony.gbe@hoganlovells.com

\*Appearing in this matter by Special  
Appearance pursuant to L-R 83.1(d)

## **CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.3(d), I hereby certify that this brief contains 1,933 words as counted by the word count feature of Microsoft Word.

/s/ Hilary Harris Klein  
Hilary Harris Klein

## **CERTIFICATE OF SERVICE**

I certify that on January 24, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Hilary Harris Klein  
Hilary Harris Klein

# **EXHIBIT 1**

*Excerpts of October 25, 2024 (Volume 1),  
Deposition of Deborah D. Maxwell*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

~~~~~

SHAUNA WILLIAMS, et al.,

Plaintiffs,

vs.

Case No. 23-CV-1057

REPRESENTATIVE DESTIN

HALL, etc., et al.,

Case No. 23-CV-1104

Defendants.

~~~~~

NORTH CAROLINA STATE

CONFERENCE OF THE NAACP, et al.,

Plaintiffs,

PHILIP BERGER, etc., et al.,

Defendants.

~~~~~

The Remote Deposition of

DEBORAH D. MAXWELL

October 25, 2024

9:30 a.m.

Cynthia Sullivan, RPR

1 APPEARANCES:

2  
3 On behalf of the Plaintiffs:

4 Southern Coalition for Social

5 Justice, by

6 HILARY HARRIS KLEIN, ESQ.

7 1415 West Highway 54

8 Durham, North Carolina 27707

9 hilaryhklein@scsj.org

10  
11 On behalf of the Defendants:

12 Baker & Hostetler, by

13 ERIKA PROUTY, ESQ.

14 200 Civic Center Drive

15 Suite 1200

16 Columbus, Ohio 43215

17 eprouty@bakerlaw.com

18 and

19 Nelson Mullins Riley &

20 Scarborough, by

21 CASSIE A. HOLT, ESQ.

22 301 Hillsborough Street

23 Suite 1400

24 Raleigh, North Carolina 27612

25 cassie.holt@nelsonmullins.com

TRANSCRIPT INDEX

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES..... 2

INDEX OF EXHIBITS ..... 4

EXAMINATION OF DEBORAH D. MAXWELL:

By Ms. Prouty..... 5

REPORTER'S CERTIFICATE..... 151

EXHIBIT CUSTODY

EXHIBITS RETAINED BY COURT REPORTER

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX OF EXHIBITS

| NUMBER    | DESCRIPTION                                          | PAGE |
|-----------|------------------------------------------------------|------|
| Exhibit 1 | The Amended Notice of . . . . .<br>Deposition        | 9    |
| Exhibit 2 | Complaint No. 23 CV 1104 . . . . .                   | 29   |
| Exhibit 3 | NAACP Plaintiffs' Discovery ..<br>Responses          | 34   |
| Exhibit 4 | A Document Labeled Maxwell ...<br>Declaration        | 38   |
| Exhibit 5 | A Document Entitled Join the .<br>NAACP              | 55   |
| Exhibit 6 | A Document Bates Labeled . . . . .<br>NAACPPS_000548 | 137  |
|           | AFTERNOON SESSION . . . . .                          | 96   |

1 provide that information based on the First  
2 Amendment privilege, correct?

3 A. Correct.

4 Q. Prior to filing this lawsuit, did  
5 the North Carolina NAACP seek authorization to 11:37:05  
6 do so from any of its members?

7 MS. KLEIN: Objection. You can go  
8 ahead to the extent that the answer won't  
9 disclose the identity of anyone who is not  
10 already public. We're objecting to that on 11:37:24  
11 First Amendment grounds. But to the extent  
12 that you're able to answer, please, go ahead.

13 A. Can you repeat the question,  
14 please?

15 Q. Prior to filing this lawsuit, did 11:37:35  
16 the North Carolina NAACP seek authorization to  
17 do so from its members?

18 MS. KLEIN: Same objection. You  
19 can go ahead.

20 A. The North Carolina NAACP prior to 11:37:43  
21 filing this lawsuit knows that we have  
22 individuals in every impacted area of the  
23 lawsuit or else it would not have been filed.

24 Q. Did you seek authorization from  
25 those members to file this lawsuit? 11:38:07



1 MS. KLEIN: Objection. Go ahead.

2 A. Yes.

3 Q. How did you obtain that  
4 authorization?

5 A. By the impacted areas, you can look 11:38:36  
6 at the map, correct, and see where the branches  
7 are and the individuals.

8 Q. Did you talk to members and ask  
9 them if you could file this lawsuit on their  
10 behalf? 11:39:06

11 MS. KLEIN: Objection. Go ahead.

12 A. We have members who are in each  
13 impacted area who have agreed that we have the  
14 named plaintiffs, adults, who are not within  
15 those areas that this lawsuit is about. 11:39:33

16 Q. President Maxwell, my question was  
17 a little different. Did you talk to those  
18 members and ask them if you could file this  
19 lawsuit on their behalf?

20 MS. KLEIN: Objection. Go ahead. 11:39:47

21 A. Yes.

22 Q. Okay. When did those conversations  
23 take place?

24 A. I cannot be specific, I'm sorry,  
25 but it is over a span of time because it is 11:40:07

1 over the span of the state except for the west.

2 I wonder why.

3 Q. Is it your testimony that it was  
4 before December 19th, 2023?

5 A. It was done. I cannot give you a 11:40:29  
6 specific time.

7 Q. Who spoke to these members?

8 A. Myself and assisted by my first  
9 vice president.

10 Q. Who is the first vice president? 11:41:05

11 A. Courtney Patterson.

12 Q. Did you say -- I'm sorry. Could  
13 you repeat that name?

14 A. Courtney.

15 Q. Courtney Patterson? 11:41:18

16 MS. KLEIN: I'll just state the  
17 First Amendment objection, although I  
18 understand that Mr. Patterson is publicly  
19 disclosed in that position. So you can go  
20 ahead. 11:41:30

21 Q. How many members did you and  
22 Mr. Patterson speak to to seek their  
23 authorization to file this lawsuit on their  
24 behalf?

25 A. I cannot give you a specific 11:41:37

1 members you called?

2 A. (Indicating.)

3 Q. How did you contact those members?

4 A. Members were contacted by whatever  
5 method of contact was available to reach them. 11:49:45

6 Some people have email. Some people have  
7 phones.

8 Q. Did the North Carolina NAACP then  
9 contact members via email about authorizing the  
10 filing of this lawsuit? 11:50:12

11 A. Not really.

12 Q. How did you contact these members?  
13 Can you speak up, please?

14 A. I initially called individuals.

15 MS. KLEIN: I'm just -- I know 11:50:46  
16 you're in the middle of questions. It's past  
17 the time we have said for lunch. It might be a  
18 good time for a break coming up.

19 MS. PROUTY: If you don't mind, I  
20 just have a few questions to finish on this 11:51:00  
21 topic.

22 MS. KLEIN: I'll just defer to the  
23 witness on how she's feeling.

24 THE WITNESS: I'm getting a little  
25 confused right now. 11:51:07

1 number of these individuals, I also know their  
2 ethnicity if they had not checked it.

3 Q. Which of the members in  
4 paragraph 15 do you personally know based on  
5 your role as the president of the state 13:10:14  
6 conference?

7 A. Right now I feel like all of them  
8 who are plaintiffs, but I can't specify. I  
9 will mix up the districts. But it has been, as  
10 I told you, I have been within leadership 13:10:28  
11 within the state conference for the past 15  
12 years, so that has allowed me to meet people  
13 all across the state.

14 Q. Does the portal include information  
15 showing whether these members are black or 13:10:46  
16 African-American?

17 A. In no way, shape or form.

18 Q. Does the portal indicate whether  
19 these members are registered to vote?

20 A. No, ma'am. I don't think so. I'm 13:10:57  
21 not looking at the portal to verify voter  
22 status. I'm using the most reliable tool which  
23 is the ncsbe.gov, the state.

24 Q. Just to be clear, I think you and I  
25 are on the same page, but for the record when I 13:11:18

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REPORTER'S CERTIFICATE

The State of Ohio, )

SS:

County of Cuyahoga. )

I, Cynthia Sullivan, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, DEBORAH D. MAXWELL, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

1 I do further certify that I am not  
2 a relative, counsel or attorney for either  
3 party, or otherwise interested in the event of  
4 this action.

5 IN WITNESS WHEREOF, I have hereunto  
6 set my hand and affixed my seal of office at  
7 Cleveland, Ohio, on this 28th day of  
8 October, 2024.

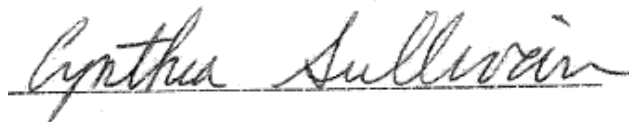
9

10

11

12

13



14

Cynthia Sullivan, Notary Public

15

within and for the State of Ohio

16

17 My commission expires October 17, 2026.

18

19

20

21

22

23

24

25

## **EXHIBIT 2**

*Excerpts of October 31, 2024 (Volume 2),  
Deposition of Deborah D. Maxwell*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

~~~~~

SHAUNA WILLIAMS, et al.,  
Plaintiffs,

vs. Case No. 23-CV-1057

REPRESENTATIVE DESTIN  
HALL, etc., et al.,  
Defendants.

~~~~~

NORTH CAROLINA STATE  
CONFERENCE OF THE NAACP, et al.,  
Plaintiffs,

vs. Case No. 23-CV-1104

PHILIP BERGER, etc., et al.,  
Defendants.

~~~~~

Deposition of  
DEBORAH D. MAXWELL  
Volume II

Thursday, October 31, 2024  
10:00 a.m.

Taken via videoconference

Genevie Del Valle, Court Reporter



1 APPEARANCES:

2  
3 Hilary Harris Klein, Esq.

Lily Talerman, Esq.

4 SOUTHERN COALITION FOR SOCIAL JUSTICE

1415 West Highway 54

5 Durham, North Carolina 27707

Hilaryhklein@scsj.org

6 Lily@scsj.org ,

7 On behalf of the Plaintiffs;

8  
9 Erika Prouty, Esq.

BAKER & HOSTETLER

200 Civic Center Drive, Suite 1200

10 Columbus, Ohio 43215

Eprouty@bakerlaw.com,

11  
12 On behalf of the Defendants.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

W I T N E S S I N D E X

PAGE

EXAMINATION DEBORAH D. MAXWELL BY MS. PROUTY	4
EXAMINATION DEBORAH D. MAXWELL BY MS. KLEIN	132

E X H I B I T I N D E X

EXHIBIT PAGE

Exhibit 6, Voting records	20
Exhibit 7, Decision summaries	107
Exhibit 8, North Carolina NAACP's website leadership page	115
Exhibit 9, NAACP Meet the Team website page	117
Exhibit 10, Second Affidavit of Deborah Dicks Maxwell, President of the North Carolina State Conference of the NAACP	120
Exhibit 11, Join the NAACP webpage	141

1 Q. It's a lot of work, right?

2 A. Yes.

3 Q. Across your time in leadership positions with the  
4 NAACP, how many members do you think you have  
5 interacted with?

6 A. I'm sorry. I -- we just had a state conference  
7 with a couple of hundred. I was at a rally with  
8 a couple of hundred. It's thousands.

9 Q. And I think you already testified to this, but do  
10 you or do you not know any of the standing  
11 members in this case personally?

12 A. I know them because standing members, two are  
13 presidents of a local branch, which is  
14 identified --

15 Q. And if we -- if some members are comfortable  
16 being publicly associated with the NAACP, does  
17 that mean that every member of the NAACP is  
18 comfortable?

19 A. Not every member is comfortable, but every person  
20 is -- will become a member financial, but not all  
21 people want to be known as a member of the NAACP.

22 My analogy is a church. Some people jump up,  
23 running down the aisle, give half their money,  
24 and then some people just -- you never see them,  
25 they just say they're a member. And then there's

1 a little grandma who just sits there.

2 And so there's different levels of how you  
3 perceive you're giving, as you do the church, in  
4 terms of stuff and how you do at NAACP. It's how  
5 active do you want to be.

6 Q. And can you tell me why a person's specific  
7 circumstances might impact whether or not they're  
8 comfortable -- if at all, whether or not they're  
9 comfortable being publicly linked to the NAACP?

10 MS. PROUTY: Objection.

11 A. The comfortableness depends on where you are in  
12 terms of where you live and economics. We have a  
13 very controversial conservative school boards and  
14 we have a lot of teachers. Teachers can get  
15 fired at will. Law enforcement, sheriffs,  
16 sheriffs will fire you. It's an economic  
17 livelihood, and I can't afford to pay them to  
18 protest with me, as one president will tell  
19 people and he will say, I will stand in for you.  
20 You've got to keep your job. We appreciate your  
21 membership. If you wish to go, understand it may  
22 be impacting you. And people understand that.  
23 And we've seen -- you've seen people get fired  
24 for no cause because this is a nonunion state.

25 Q. I'd like to ask you about the distinction between

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

The State of Ohio, ) SS:  
County of Cuyahoga.)

I, Genevie del Valle, a Notary Public within and for the State of Ohio, authorized to administer oaths and to take and certify depositions, do hereby certify that the above-named witness was by me, before the giving of their deposition, first duly sworn to testify the truth, the whole truth, and nothing but the truth; that the deposition as above-set forth was reduced to writing by me by means of stenotypy, and was later transcribed into typewriting under my direction; that this is a true record of the testimony given by the witness; that the deponent or a party requested that the deposition be reviewed by the deponent; that said deposition was taken at the aforementioned time, date and place, pursuant to notice or stipulations of counsel; that I am not a relative or employee or attorney of any of the parties, or a relative or employee of such attorney or financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office, at Cleveland, Ohio, this 15th day of November 2024.

*Genevie del Valle*

\_\_\_\_\_  
Genevie del Valle  
Notary Public, State of Ohio  
My commission expires September 28, 2028

## **EXHIBIT 3**

*Excerpts of October 18, 2024,  
Deposition of Bob Phillips*

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

3   \* \* \*

4  
5           SHAUNA WILLIAMS; et al.,  
6   Plaintiffs,

7  
8   vs.   CIVIL ACTION NO. 23-CV-1057

9           REPRESENTATIVE DESTIN HALL, in  
10           his Official Capacity as Chair  
11           of the House Standing Committee  
12           on Redistricting; et al.,

13   Defendant.

14   \* \* \*

15           NORTH CAROLINA STATE CONFERENCE OF  
16           THE NAACP; et al.,  
17   Plaintiffs,

18   vs.   CIVIL ACTION NO. 23-CV-1104

19           PHILIP BERGER, in his official  
20           capacity as the President Pro  
21           Tempore of the North Carolina  
22           Senate; et al.,

23   Defendants.

24   REMOTE 30(b)(6) DEPOSITION OF BOB PHILLIPS  
25   OCTOBER 18, 2024

   \* \* \*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Remote 30(b)(6) Deposition of  
BOB PHILLIPS, a witness herein, called by the  
Legislative Defendants for examination pursuant  
to the Rules of Civil Procedure, taken before  
me, Patti Stachler, RMR, CRR, a Notary Public  
within and for the State of Ohio, at the office  
of Southern Coalition for Social Justice,  
Durham, North Carolina, on October 18, 2024, at  
9:38 a.m.

\* \* \*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

BOB PHILLIPS	PAGE
Examination by Ms. Prouty	6
Examination by Ms. Klein	258
Further Examination by Ms. Prouty	272

INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE
Exhibit 1	Amended Notice of Deposition	8
Exhibit 2	Complaint	38
Exhibit 3	NAACP Plaintiffs' Discovery Responses	48
Exhibit 4	Web page - Become a Common Cause Member	59
Exhibit 5	Web page - Contact	62
Exhibit 6	Phillips Affidavit	104
Exhibit 7	Allen v Milligan Decision Summary	255
Exhibit 8	NAACPPS_0004442 (Highly Confidential)	260

\* \* \*

1 APPEARANCES: (All appeared remotely.)

2

3 On behalf of the NAACP Plaintiffs:

4 Southern Coalition for  
5 Social Justice

5

6 By: Hilary Harris Klein, Esq.

7 Lily Talerman, Esq.

8 Chris Shenton, Esq.

9 P.O. Box 51280

10 Durham, North Carolina 27717

11 hilaryhklein@scsj.org

12

13 On behalf of the Williams Plaintiffs:

14 Elias Law Group

15 By: Alison (Qizhou) Ge, Esq.

16 250 Massachusetts Avenue NW

17 Suite 400

18 Washington, DC 20001

19 age@elias.law

20

21

22

23

24

25

1 APPEARANCES: (All appeared remotely.)

2  
3 On behalf of the Legislative Defendants:

4 Baker & Hostetler, LLP

5 By: Erika D. Prouty, Esq.

Katherine McKnight, Esq.

6 Patrick Lewis, Esq.

200 Civic Center Drive

7 Suite 1200

Columbus, Ohio 43215

8 eprouty@bakerlaw.com

kmcknight@bakerlaw.com

9 plewis@bakerlaw.com

10 and

11 Nelson, Mullins, Riley &

Scarborough, LLP

12  
13 By: Jordan Koonts, Esq.

301 Hillsborough Street

Suite 1400

14 Raleigh, North Carolina 27603

jordan.koonts@nelsonmullins.com

15  
16 \* \* \*

17

18

19

20

21

22

23

24

25

1 not ten members -- but the --

2 A. Standing members.

3 Q. The standing members. For each of  
4 the standing members, did you verify whether  
5 they have donated financially to Common Cause  
6 in the last two years?

7 A. Yes.

8 Q. Okay. And is it your testimony  
9 that all of the standing members have donated  
10 to Common Cause in the last two years?

11 A. No. It is my testimony that there  
12 are donors within the standing members, but not  
13 all 100 percent of those standing members are  
14 Common Cause North Carolina donors. They are  
15 members through those other options that we've  
16 talked about.

17 Q. How many members -- how many of  
18 the standing members have donated financially  
19 in the last two years?

20 A. I don't know. I didn't really  
21 take note of that carefully to think, you know,  
22 X percent are North Carolina donors. It was  
23 for us probably a member or active member.

24 Q. So if there were members who  
25 have -- standing members who have not donated

1 financially in the last two years, how did you  
2 verify that they were otherwise active members  
3 of Common Cause?

4 A. Again, as we had talked about, we  
5 do note when people have done something, if  
6 they've attended a meeting or if they've done  
7 some kind of an action of a take action.

8 So as I had mentioned as well,  
9 we've been doing a lot of outreach of  
10 communities in these areas, and so we have what  
11 I would say would be very current, you know,  
12 information about that. Many people are, you  
13 know, both donors and folks -- I say many  
14 people. I don't have a number to quantify  
15 that, but there would be standing members who  
16 were both donors and folks who are taking  
17 action or they attended a meeting or they've  
18 done something like that with us in the last  
19 two years.

20 Q. So there are standing members who  
21 have not donated financially, but they have  
22 taken action with Common Cause in the last two  
23 years?

24 A. Every person that is in that  
25 standing member that we were talking about --

1 Q. Yes.

2 A. -- is an active member of Common  
3 Cause North Carolina, every single one of them.

4 Q. Did you verify what type of action  
5 that they had taken with Common Cause in the  
6 last ten years?

7 A. So we certainly did. I mean,  
8 because that was the way we would know are you  
9 an active member. So, yes, that was verified.

10 Q. Okay. Was there a threshold that  
11 you applied of number of events that someone  
12 had attended or number of phone calls that  
13 someone had made or those advocating on behalf  
14 of an issue for Common Cause, was there a  
15 threshold for those types of actions that you  
16 applied to determine that someone was active  
17 and could be included as a standing member?

18 A. No.

19 Q. So someone could have attended one  
20 event and advocated on behalf of Common Cause  
21 and they could be a standing member?

22 A. They could. As we had talked  
23 about, you know, that is a member. And we  
24 don't have a scale of, you know, who's done X  
25 number of times or whatever, but, yes. If they

1           Q.    How did you verify if the  
2 potential standing members had regularly voted  
3 in the past?

4           A.    You go to the voter file and see,  
5 you know, if they cast a ballot.

6           Q.    And when Common Cause spoke to  
7 each of these standing members in December of  
8 2023, did they verify that the standing members  
9 intend to vote in the future?

10          A.    I don't know if that was something  
11 that was specifically asked.

12          Q.    In the ten phone calls that you  
13 made, was that something you asked?

14          A.    I was covering more about the  
15 lawsuit, so it was not something that I had  
16 asked.

17          Q.    Okay. Did Common Cause do  
18 anything to verify who was the candidate of  
19 choice for each of the standing members?

20          A.    You mean in terms of a specific  
21 candidate or specific name? That was not  
22 discussed.

23          Q.    Okay. And so in the ten phone  
24 calls that you made, you didn't ask that  
25 question?

1           A.    No, I did not talk candidates or  
2 potential -- you know.

3           Q.    Okay.  In that December 2023  
4 outreach, did Common Cause verify if the  
5 standing members were willing to have their  
6 names and addresses disclosed in this lawsuit?

7           A.    We did.  But that was where, as I  
8 state in my affidavit, about how  
9 confidentiality is very important to us.  So we  
10 talked about it in those terms about what that  
11 might mean.

12          Q.    You had that conversation in  
13 December of 2023 before the lawsuit was filed?

14          A.    Right.

15          Q.    And what exactly did you tell them  
16 about confidentiality and whether their names  
17 and addresses would be disclosed?

18          A.    Well, just that our position would  
19 be that we would never release their names or  
20 agree to having their names be released  
21 publicly.

22          Q.    Under any circumstances, they  
23 would -- you would never agree to release them?

24          A.    Not to the public.  It would be a  
25 protected seal if we could possibly agree to,



1 and that's how we were discussing that.

2 Q. Did any of the standing members  
3 express a willingness to have their names and  
4 addresses disclosed?

5 A. No, not to us in terms of -- you  
6 know, if you're asking publicly disclosed?

7 Q. Yeah.

8 A. No.

9 Q. Okay. Did any of them state that  
10 they would withdraw from the case if their  
11 names and addresses would be publicly  
12 disclosed?

13 A. We did receive that information  
14 from some of the members, yes.

15 Q. Okay.

16 A. I mean, again, I can't tell you  
17 how many, but that was a concern by members,  
18 that they would not want their names to be  
19 publicly disclosed.

20 Q. Who specifically shared that  
21 concern?

22 MS. KLEIN: Objection. To the extent  
23 that it would include disclosing the identity of  
24 members, we are claiming First Amendment privilege  
25 over that. So I'll instruct the plaintiff not to

1 that's the number of districts listed?

2 A. I do.

3 Q. Okay. Can you explain why the  
4 complaint states that Common Cause had members  
5 in six districts -- six Senate Districts, but  
6 the response to interrogatory number 4 only  
7 states that Common Cause had members in three  
8 Senate Districts?

9 A. Yes. The difference is that in  
10 July, when we went back and, again, calling all  
11 the members that we had connected with in  
12 December, there were simply some folks that we  
13 were not able to reach for whatever reason.

14 When I say for whatever reason, we  
15 were not able to reach them. And out of an  
16 abundance of caution, we then excluded those  
17 folks that we were not reaching in July from  
18 this discovery document.

19 Q. Okay. Was anyone removed as a  
20 standing member in July of 2024 because they  
21 said they no longer wanted to have their  
22 standing asserted in this case?

23 A. No, not that I'm aware of.

24 Q. Okay. And was anyone removed as a  
25 standing member because they did not want to

1 have their name or address publicly identified?

2 A. We, to my knowledge, did not  
3 remove anyone for that purpose, though we have  
4 certainly, as I have mentioned earlier to you,  
5 that we had heard from members who were not  
6 wanting to have their name and address publicly  
7 identified. So we know that going in. But in  
8 July I don't recall or know that there were  
9 people that we heard then that, you know, said  
10 take me off the list because of that. We had  
11 already had that conversation with folks.

12 Q. Did any of the standing members  
13 say that they would still be willing to have  
14 their standing asserted in this case even if it  
15 meant their names and addresses would be  
16 publicly identified?

17 A. I'm not aware that that was  
18 actually affirmatively stated to any of us.

19 Q. Okay. Do you know if it was asked  
20 of anyone?

21 A. If we asked -- you're asking did  
22 we ask anyone, hey, if we had to -- we did not  
23 ask that, no.

24 Q. Okay.

25 A. Because, again, that is -- would

1 concentration of African-American members, and  
2 they under this plan are not able to select  
3 anyone of their choosing because of the way the  
4 map has fallen.

5 Q. I understood your testimony  
6 earlier that you did not ask the standing  
7 member in Senate District 1 who their candidate  
8 of choice was; isn't that correct?

9 A. That's correct.

10 Q. Did you speak with the standing  
11 member in Senate District 1 about what their  
12 harm is in this case?

13 A. In terms of talking to them about  
14 what we were doing and why, yes, that the maps  
15 were not allowing for African-American  
16 opportunity districts in that part of the  
17 state. And certainly members are aware of  
18 that, and understanding that it is a  
19 discriminatory map, that harms them.

20 Q. Did you talk to the member -- the  
21 standing member in Senate District 1  
22 personally?

23 A. I don't recall if the people that  
24 I talked with are from -- I mean, which  
25 districts. I would have to look back.

1           But, again, going back to, you  
2 know, what I said, every person that we have in  
3 this complaint is someone that we had  
4 conversations with to explain the complaint and  
5 the whys behind it and the harm that they would  
6 incur.

7           Q.     But you didn't specifically talk  
8 with the member in Senate District 1 about what  
9 their harm is; is that correct?

10          A.     If it's personally me, maybe I  
11 don't recall.

12          Q.     Yeah.

13          A.     But, you know, again, as an  
14 organization, it's not just me. As we have  
15 talked about, we were contacting and having  
16 conversations with members that are listed that  
17 are a part of this complaint.

18          Q.     Can you tell me which Common Cause  
19 staff member spoke to the person in Senate  
20 District 1?

21          A.     You know, again, there were, as I  
22 mentioned, a half-dozen of us doing those  
23 calls, so I don't know that I could, sitting  
24 here with no information, tell you that.

25          Q.     Does Common Cause have records of

1 a tremendous burden on, and particularly young  
2 people.

3 BY MS. KLEIN:

4 Q. And what -- how do you get that  
5 sense?

6 A. Well, just understanding that some  
7 of the members that we have are super engaged  
8 and super active and they have the time and  
9 they have the sort of know-how and they put a  
10 lot of commitment of their lives, you know, to  
11 be an active member because that's what they  
12 are being a, you know, strong provider to  
13 improving our democracy.

14 It's not to say that younger folks  
15 and working folks are not as committed and  
16 dedicated, but they don't have the time and  
17 they don't have perhaps the experience of  
18 having that kind of exposure.

19 Q. And how many years have you been  
20 working with members in your role at Common  
21 Cause?

22 A. I mean, since I started the job.

23 Q. So if you had to ballpark guess  
24 how many members you have interacted with over  
25 that period of time, what would you --

1           A.     It would be hundreds.  I mean,  
2     maybe in, you know, thousands.  I guess I could  
3     say that it would definitely be thousands  
4     because, you know, interactions can be a  
5     variety of things, but, sure, that would be  
6     accurate.

7           Q.     You were shown disclosures that  
8     were made by the individual defendants in this  
9     earlier.  Do you remember that?

10          A.     (Nodding head.)

11          Q.     And you were shown specifically  
12     individual defendants disclosing that -- Mitzi  
13     Reynolds disclosing that she is a member of  
14     Common Cause.  Do you remember that?

15          A.     I do.

16          Q.     Did you make that decision for her  
17     to disclose her as a member?

18          A.     No.  No.  She, you know, made that  
19     decision on her own, and we certainly found out  
20     about it after the fact.

21          Q.     And if one member of Common Cause  
22     is willing to stand up and self-identify, to  
23     you does that indicate that every single other  
24     member of Common Cause would do the same thing?

25          A.     Yeah, no, absolutely not.  I think

1 Mitzi is an example. She's very active and,  
2 for her, she has -- able to make that decision  
3 on her own based on her activism. And not  
4 everybody, you know, would be able to be able  
5 to do that or feel that way.

6 Q. And what about if people show up  
7 to, you know, a public rally or a public lobby  
8 day wearing a Common Cause T-shirt, does that  
9 tell you that every single member of Common  
10 Cause is willing to be self-identified as  
11 associated with the organization?

12 A. No. I mean, some people certainly  
13 are with us, but they're, you know, not  
14 necessarily going to be -- well, you know, in  
15 this instance -- they're not necessarily going  
16 to be willing to be identified publicly that  
17 they're a part of us.

18 Q. All right. And just going back to  
19 the issue of depositions, what if somebody, you  
20 know, a member who did not -- strike that.

21 I asked you about the impact of  
22 depositions and what that would have on members.  
23 Can you tell me, what about being called at trial?  
24 If one of your standing members were called at  
25 trial, what kind of -- as a possibility of that,



1 evening, October 16th, I believe after  
2 7:00 p.m. So my question to you is, why was  
3 this produced on October 16th and not on  
4 October 2nd when you submitted your affidavit?

5 A. Well, you know, again, I'm not  
6 involved in all the legal kind of strategies  
7 and such. I know that we were needing to  
8 confirm the race of the one individual. And,  
9 again, I'm making -- in terms of talking with  
10 staff and attorneys, I would imagine it would  
11 be just to, again, be sure. And that was one  
12 last check.

13 I'm sorry, but I wasn't trying to  
14 ask a antagonizing question to you, but it took  
15 me a while to kind of figure out what you were  
16 asking.

17 Q. Sitting here today just looking at  
18 this document, Exhibit 8, can you confirm which  
19 of these members that you personally spoke  
20 with, if any of them?

21 A. There are members on that document  
22 that I talked with way back in December.  
23 Obviously, I'm not able to say who they are and  
24 how many there are on that list.

25 Q. Can you direct me to the page of

1 STATE OF OHIO )

2 COUNTY OF HAMILTON ) SS: CERTIFICATE

3  
4 I, Patti Stachler, RMR, CRR, a  
5 Notary Public within and for the State of Ohio,  
6 duly commissioned and qualified,

7 DO HEREBY CERTIFY that the  
8 above-named BOB PHILLIPS was by me first  
9 remotely duly sworn to testify the truth, the  
10 whole truth, and nothing but the truth.

11 Said testimony was reduced to  
12 writing by me stenographically in the presence  
13 of the witness and thereafter reduced to  
14 typewriting.

15 I FURTHER CERTIFY that I am not a  
16 relative or attorney of either party, in any  
17 manner interested in the event of this action,  
18 nor am I, or the court reporting firm with  
19 which I am affiliated, under a contract as  
20 defined in Civil Rule 28(D).

21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN WITNESS WHEREOF, I have  
hereunto set my hand and seal of office at  
Cincinnati, Ohio, on this 21st day of October  
2024.



PATTI STACHLER, RMR, CRR  
NOTARY PUBLIC, STATE OF OHIO  
My commission expires 10-5-2028