

STATE OF NORTH CAROLINA

COUNTY OF WAKE

COMMON CAUSE, et al.,

Plaintiffs,

v.

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

Defendants.

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

18 CVS 014001

2019 FEB 19 P 3:24

WAKE CO., C.S.C.

BY

*[Signature]*

**PLAINTIFFS' FIRST  
MOTION TO COMPEL**

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## INTRODUCTION

Pursuant to North Carolina Rule of Civil Procedure 37, Plaintiffs respectfully submit this motion to compel long-overdue discovery responses from Legislative Defendants. Legislative Defendants have not only failed to produce responsive information and records, but they have engaged in gamesmanship that render this motion time-sensitive.

Plaintiffs served interrogatories and requests for production (“RFPs”) the same day they filed the complaint, on November 13, 2018. Legislative Defendants’ responses were due on January 4, 2019. Legislative Defendants served initial interrogatory responses that were non-responsive or facially deficient; *e.g.*, they refused to provide basic information such as the names of persons involved in the redistricting. The parties conferred and agreed that Legislative Defendants would supplement their responses by February 1. After missing that deadline, Legislative Defendants repeatedly said they needed more time to gather information. But when they finally responded on February 15, their responses were materially indistinguishable from the January 4 responses. Legislative Defendants waited to provide these responses until after the parties submitted a case schedule with a fast-approaching deadline for Plaintiffs’ expert reports.

Legislative Defendants’ responses to the RFPs are just as troubling. To date, they have produced a total of five pages of non-public documents. They have refused to provide a timeline by which they will produce more responsive documents, have not provided a privilege log, and have reneged on a commitment to provide basic information regarding their search process.

Legislative Defendants’ dilatory tactics render this motion time-sensitive. Plaintiffs’ expert reports are due on March 22 under the stipulated case schedule, and the discovery sought is highly pertinent to those reports. Plaintiffs request that the Court order Legislative Defendants to respond to this motion by February 22, and that the Court rule at its earliest convenience and order Legislative Defendants to promptly provide proper, complete responses.

## BACKGROUND

On November 13, 2018, Plaintiffs Common Cause, the North Carolina Democratic Party, and 38 individual North Carolina voters filed this lawsuit challenging North Carolina's 2017 state House and state Senate districting plans (the "2017 Plans") under the North Carolina Constitution. That same day, Plaintiffs sent their First Set of Interrogatories and First Set of Requests for Production of Documents ("RFPs") to all Defendants. Exs. A, B.

On January 4, 2019, Legislative Defendants<sup>1</sup> provided responses to the Interrogatories and RFPs. Exs. C, D. On January 15, Plaintiffs sent Legislative Defendants a letter outlining numerous deficiencies in their responses, including that Legislative Defendants had failed to provide any substantive response to many Interrogatories and that the responses to others were facially deficient. Ex. E at 2-8. Plaintiffs also noted that Legislative Defendants' production in response to the RFPs consisted almost exclusively of public hearing transcripts and public court filings from *Covington v. North Carolina*, No. 1:15-cv-00399 (M.D.N.C.). Ex. E at 8-10. Plaintiffs further noted that Legislative Defendants had not produced a privilege log detailing the information and records being withheld on the basis of privilege. *Id.* at 2. Legislative Defendants responded to Plaintiffs' letter with their own letter on January 22. Ex. F.

The parties conducted a meet and confer on January 25. There, the parties discussed the following topics and reached the following agreements:

- Interrogatories #1-4: The parties disputed the scope of these Interrogatories, which request information on persons who had "any involvement" in drawing or revising, or in developing criteria for, the 2017 Plans. Legislative Defendants asserted that the Interrogatories cover only persons who *literally* drew or revised district boundaries or the criteria, whereas Plaintiffs asserted that the Interrogatories encompass persons who had "any involvement" in the process of creating the 2017 Plans or the criteria. Legislative Defendants said that Plaintiffs would need to serve new, broader

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<sup>1</sup> Legislative Defendants are the Speaker of the House Timothy K. Moore, President Pro Tempore of the Senate Philip E. Berger, Senior Chairman of the House Select Committee on Redistricting David R. Lewis, and Chairman of the Senate Standing Committee on Redistricting Ralph E. Hise, Jr.

interrogatories to get that information. Ex. F at 2. Plaintiffs agreed to do so on the condition that Legislative Defendants would respond to the new interrogatories by February 1, and Legislative Defendants agreed. Ex. G at 1. Plaintiffs served the four new interrogatories, as their Third Set of Interrogatories, on January 25. Ex. I.

- Interrogatories #5, 7, 8, 12-18: The parties discussed the deficiencies that Plaintiffs identified in Legislative Defendants' responses to these interrogatories. Legislative Defendants agreed to supplement their responses by February 1 for five of the interrogatories and by February 8 for the other five. Ex. G at 1-2.
- RFPs: Legislative Defendants agreed to advise Plaintiffs by February 1 of the process used to search for documents, including to identify the custodians searched. Ex. G at 2. Legislative Defendants also agreed to confirm by February 1 that text messages and other methods of communications were searched. *Id.*
- Privilege Log: Legislative Defendants' counsel asserted that he did not believe any responsive privileged materials existed, and thus Legislative Defendants were not withholding anything on the basis of privilege. Ex. G at 1. But counsel agreed to inform Plaintiffs by February 1 whether that remained Legislative Defendants' position or whether Legislative Defendants would produce a privilege log. *Id.*

Immediately following the meet and confer, on January 25, Plaintiffs sent Legislative Defendants an email memorializing the above understandings and agreements. Ex. G.

Legislative Defendants did not reply or otherwise dispute the agreements reached.

Over the ensuing weeks, the following sequence of events unfolded:

- On February 1, the day by which Legislative Defendants had agreed to provide various responses and other information, Legislative Defendants emailed saying that they were not "in a position to serve responses today," but would do so "no later than next week." Ex. H (2/1/19 e-mail from Strach to Jones).
- A week later, on February 8, Plaintiffs followed up asking about the status of the overdue responses. Ex. H (2/8/19 e-mail from Jones to Strach). Legislative Defendants responded that they were "working diligently on these issues" and would "endeavor to give . . . a specific timeframe as soon as [they are] able." *Id.* (2/8/19 e-mail from Strach to Jones).
- On February 11, Plaintiffs e-mailed Legislative Defendants indicating that, in an effort to avoid motions practice, Plaintiffs would refrain from filing a motion to compel if Legislative Defendants would commit to providing the overdue responses by February 14. Ex. H (2/11/19 e-mail from Jones to Strach).

- During a separate meet and confer on February 14 about the case schedule, Legislative Defendants indicated that they would provide the overdue interrogatory responses the next day. When Plaintiffs inquired about the status of Legislative Defendants’ document production and privilege log—which was already more than a month overdue—Legislative Defendants said they were in the process of searching for records and would not provide any timeline by which they would produce documents or a privilege log. Nor would Legislative Defendants provide basic information regarding the search process or custodians being searched, despite previously having agreed to provide that information by February 1. Ex. G at 2.
- On February 15, the parties agreed to a case schedule under which Plaintiffs’ expert reports are due on March 22 and written discovery from Defendants closes on March 20. Plaintiffs made clear when conferring on the case schedule that Plaintiffs needed all written discovery from Defendants before Plaintiffs’ expert reports are due.
- On the night of February 15, after the parties submitted the stipulated case schedule, Legislative Defendants finally provided their responses to Plaintiffs’ original and supplemental interrogatories. Exs. I, J. Despite having repeatedly missed agreed-upon deadlines on the premise that Legislative Defendants were “working diligently” and needed more time to track down information, Legislative Defendants provided almost no new information in their February 15 responses. Instead, their answers merely reiterated their original deficient January 4 answers, objected on overbreadth grounds, or said that the information sought was already public record.
- As of this filing, Legislative Defendants have not produced any records in response to Plaintiffs’ First Set of RFPs—for which responses were due January 4—other than their initial production that consisted almost exclusively of public hearing transcripts and public court filings. Nor have Legislative Defendants provided a privilege log of materials being withheld, any information on their search process, or a timetable for further production.

## ARGUMENT

North Carolina Rule of Civil Procedure 37 provides that a party may move to compel responses to interrogatories or the production of documents where another party “fails to answer an interrogatory submitted under Rule 33” or to produce records requested under Rule 34. N.C. R. C.P. 37(a)(2). For purposes of a motion to compel, an “evasive or incomplete answer is to be treated as a failure to answer” a discovery request. N.C. R. C.P. 37(a)(3).

“The party resisting discovery bears the burden of showing why the motion to compel should not be granted.” *Window World of Baton Rouge, LLC v. Window World, Inc.*, 2018 WL 6722590, at \*2 (N.C. Sup. Ct. Dec. 19, 2018) (internal quotation marks omitted). “Specifically, the party seeking protection from the court from responding to discovery must make a particularized showing of why discovery should be denied, and conclusory or generalized statements fail to satisfy this burden as a matter of law.” *Nat’l Fin. Partners Corp. v. Ray*, 2014 WL 5148197, at \*9 (N.C. Sup. Ct. Oct. 13, 2014) (internal quotation marks omitted).

Rule 37 provides trial courts “the means and power to compel recalcitrant parties to abide by the rules of discovery.” *F. E. Davis Plumbing Co. v. Ingleside W. Assocs.*, 37 N.C. App. 149, 153, 245 S.E.2d 555, 557 (1978). “Thus, the trial judge has broad discretion in imposing sanctions to compel discovery under Rule 37.” *Id.* Here, Legislative Defendants cannot meet their burden to justify their refusal to respond to Plaintiffs’ discovery requests, and an order compelling prompt compliance is necessary to enable Plaintiffs to have the discovery to which they are entitled before their expert reports are due on March 22, and to hold Legislative Defendants to their legal obligations that they have willfully ignored.

#### **I. Legislative Defendants Have Failed To Produce Records Responsive**

Plaintiffs’ First Set of RFPs seek, among other things, all documents and communications referring or relating to the 2017 Plans. Ex. B at 5. The RFPs make clear that they seek information under the possession, custody, or control of Legislative Defendants or their “attorneys or agents, or . . . anyone acting on [their] behalf or on behalf of [their] attorneys, or [their] agents.” *Id.* at 1; *see also id.* at 4 (“With respect to the Individual Defendants, ‘You’ or ‘Your’ refers to the Individual Defendants and their predecessors in office, attorneys, representatives, agents, and others acting on their behalf.”).

Legislative Defendants' responses to these RFPs were due on January 4. That day, Legislative Defendants produced 1883 pages of records, but 1878 of those 1883 pages were public hearing transcripts or public court filings. The other five pages consisted of a memorandum authorizing the Democratic Caucus to hire staff for the redistricting, a formal engagement letter with Dr. Thomas Hofeller hiring him to draw the 2017 Plans, an invoice from Dr. Hofeller for his work, and an e-mail to Dr. Hofeller transmitting the criteria that the House and Senate Redistricting Committees had formally adopted.

Plaintiffs subsequently explained to Legislative Defendant that it was implausible that they or their agents did not generate a single non-public document, exchange a single communication, or have a single private meeting relating to the 2017 Plans outside of the five non-public pages produced. Ex. E at 9. Legislative Defendants promised to reinvestigate and update Plaintiffs by February 1. Ex. G at 1-2. But they ignored that deadline. Weeks later, during a February 14 meet and confer about the case schedule, Legislative Defendants indicated that they were now in the process of *searching* for records in the first instance. They asserted for the first time that they had not thought the RFPs applied to Legislative Defendants' staff but now were searching staff records. The RFPs on their face apply to legislative staff.

Legislative Defendants refused to provide a timetable by which they would produce any records, and they offered no explanation for why they had only now begun to search for records. They also reneged on their commitments to inform Plaintiffs of the process being used to search for records (including the specific custodians searched) and to confirm that they have searched text messages and other forms of communications. *See* Ex. G at 2. Although on January 25 Legislative Defendants agreed to provide Plaintiffs with this information by February 1, none of this information has been provided to date.

Legislative Defendants’ conduct flagrantly disregards their discovery obligations under the North Carolina Rules of Civil Procedure. Plaintiffs’ First Set of RFPs have been pending for more than three months (since November 13), and Legislative Defendants’ responses were due a month and a half ago (on January 4), yet Legislative Defendants have refused to produce responsive records or to provide basic information regarding their search process and if and when they will produce records. Instead, they have repeatedly promised that they will do so “soon”—causing Plaintiffs to delay this motion to compel for weeks in reliance on Legislative Defendants’ representations—and then have reneged on their commitments. Plaintiffs need these records without delay, including for their expert reports now due on March 22. Plaintiffs respectfully request that the Court order Legislative Defendants to:

- Immediately begin producing records responsive to Plaintiffs’ First Set of RFPs and complete the full production no later than 10 days after the Court’s order;
- Provide, by Monday, February 25, a detailed description of the process used to search for responsive records, including the custodians searched, as Legislative Defendants previously committed to do by February 1. Ex. G at 2; and
- Confirm, by Monday, February 25, that Legislative Defendants have searched all relevant custodians’ text messages and other methods of communications, as Legislative Defendants previously committed to do by February 1. Ex. G at 2.

## **II. Legislative Defendants Have Failed To Produce a Privilege Log**

Legislative Defendants have objected to various interrogatories and RFPs on the ground that they seek information or materials covered by the attorney-client privilege, legislative privilege, or the work product doctrine. North Carolina Rule of Civil Procedure 26(b)(5) requires that, when withholding otherwise discoverable information on such bases, “the party must (i) expressly make the claim and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.”



Legislative Defendants have failed to comply with Rule 26(b)(5). Even though Legislative Defendants' discovery responses were due a month and a half ago, Legislative Defendants still have not provided any privilege log describing the information and documents being withheld on the basis of privilege or the work product doctrine. A privilege log is necessary for Plaintiffs to assess the nature of the documents being withheld and whether Plaintiffs will move to compel on some or all of those documents.

Plaintiffs therefore respectfully request that the Court order Legislative Defendants, by February 27, to produce a privilege log compliant with Rule 26(b)(5).

### **III. Legislative Defendants Have Failed To Adequately Respond to Plaintiffs' First and Third Sets of Interrogatories**

#### **A. First Set of Interrogatories #1-4 and Third Set of Interrogatories #1-4**

Interrogatories #1 and #2 in Plaintiffs' First Set of Interrogatories ask Legislative Defendants to:

- "1. Identify each person who, to your knowledge, had any involvement in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans."
- "2. For each person identified in response to Interrogatory 1, describe that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans."

Ex. C at 3,5. Interrogatories # 3 and #4 then asked Legislative Defendants to provide the affiliations of each person identified in response to Interrogatory #1 and the entity that paid for that person's fees or expenses in relation to the 2017 Plans. Ex. C at 6-7.

In their January 4 response to Interrogatories #1 and #2, Legislative Defendants answered that Dr. Hofeller drew the 2017 Plans under the "direction" of Representative Lewis and Senator Hise, that Representative Lewis and Senator Hise were "responsible for developing and

proposing the criteria” for the 2017 Plans, that Representative Dollar “had input revising the 2017 House Plan,” and that Senators Bishop Meredith, Wade, and Alexander “were consulted on some revisions to the 2017 Senate Plan.” Ex. C at 4. As Plaintiffs explained, this response was deficient because it did not identify other persons who had “any involvement” in the 2017 redistricting, as requested. Ex. E at 2-3. For instance, even though Legislative Defendants indicated in answers to other Interrogatories that they consulted with specific staff members and legal counsel in creating the 2017 Plans, those staff members and legal counsel were not listed in their Interrogatory #1 response. *Id.* Legislative Defendants did not even list Speaker Moore or Senator Berger, even though they admittedly authorized the hiring of Dr. Hofeller to draw the maps. *Id.* With respect to Interrogatory #2, Legislative Defendants provided no details regarding the “direction” that Representative Lewis and Senate Hise provided and the nature of the “input” and “consult[ing]” that Representative Dollar and Senators Bishop Meredith, Wade, and Alexander provided. *Id.* at 3-4.

At the parties’ January 25 meet and confer, Legislative Defendants took the position that Interrogatory #1 narrowed covered only persons who literally drew or revised the 2017 Plans or developed the criteria for the plans. Plaintiffs countered that the Interrogatory broadly requested the identities of persons who had “any involvement,” and Plaintiffs explained during the meet and confer that they were simply seeking the names of staff members, counsel, and others who played a role in developing the 2017 Plans. Legislative Defendants insisted that Plaintiffs would need to serve new interrogatories to get that information, and Plaintiffs ultimately agreed to do so on the condition that Legislative Defendants would respond to the new interrogatories by February 1. Ex. G at 1. Legislative Defendants agreed to that condition. *Id.*

Thus, on January 25, Plaintiffs served their Third Set of Interrogatories, which offered new versions of the original first four interrogatories, including the following Interrogatory #1:

Identify each person who, to your knowledge, had any involvement in (a) the development, formulation, discussion, consideration, assessment, review, drawing, revision, negotiation, and/or adoption of the 2017 Plans and/or the 2017 Plans Criteria; (b) assisting Legislative Defendants, Representative Dollar, Senator Bishop, Senator Meredith, Senator Wade, Senator Alexander, or any others persons identified under subsection (a) with respect to the development, formulation, discussion, consideration, assessment, review, drawing, revision, negotiation, and/or adoption of the 2017 Plans and/or the 2017 Plans Criteria; and/or (c) any other aspect of the process of developing, formulating, discussing, considering, assessing, reviewing, drawing, revising, negotiating, and/or adopting the 2017 Plans and/or the 2017 Plans Criteria. This request covers individuals including, but not limited to, legislative staff members and contractors, legal counsel, outside political consultants or members of political organizations, and mapmakers such as Dr. Hofeller and persons assisting or working with mapmakers such as Dr. Hofeller.

Ex. I at 4. Like the initial interrogatories, Interrogatories #2-4 of the Third Set of Interrogatories sought information about the persons identified in response to Interrogatory #1. *Id.* at 6-8.

Legislative Defendants did not respond to these new Interrogatories by February 1 as they had committed, but instead said they needed another week to respond. Ex. H (2/1/19 e-mail from Strach to Jones). After another week passed, Legislative Defendants said they needed yet more time. *Id.* (2/8/19 e-mail from Strach to Jones). When Plaintiffs indicated that they would file a motion to compel, Legislative Defendants finally provided the following response on February 15: “the answer to this interrogatory may be ascertained from a review of the documents produced in this matter,” and “[i]n light of the breadth of this interrogatory, all names that appear in all legislative transcripts, documents produced in the *Covington* matter, and all other documents produced are potentially responsive to this interrogatory.” Ex. I at 4-5. They added that “counsel of record in the *Covington* case were consulted for legal advice.” *Id.*

This is gamesmanship. Legislative Defendants said that Plaintiffs’ original Interrogatory #1 was too narrow but they would provide the information Plaintiffs sought if Plaintiffs served a

new, broader interrogatory. When Plaintiffs did so, Legislative Defendants missed their deadline on the theory they needed more time (*see* Ex. H), then weeks later responded providing no additional information and saying that the new Interrogatory is too broad. Legislative Defendants know exactly what information Plaintiffs seek—the names of, and descriptions of the roles played by, persons involved in the process of developing the 2017 Plans, including staff members, counsel, and consultants. Plaintiffs have a right to that basic information in part so they can decide whether to seek discovery from such persons. Moreover, Legislative Defendants cannot say that Plaintiffs can “ascertain[]” the names of relevant persons “from a review of documents,” Ex. I and 4-5, especially given that Legislative Defendants have not produced non-public documents in their possession. Legislative Defendants must themselves provide the names of relevant persons in response to the Interrogatory. Legislative Defendants must also provide, in response to the original and revised Interrogatory #2, more detailed descriptions of the roles played by persons identified in response to the original and revised Interrogatory #1. It does not suffice to say, without any elaboration, that certain people were “consulted” or that other people provided “direction” or “input.”

Plaintiffs respectfully request that the Court order Legislative Defendants promptly to:

- Respond in good-faith to Interrogatory #1 in the First Set of Interrogatories, by identifying persons who, to the best recollection of Legislative Defendants, had “any involvement” in the development of the 2017 Plans;
- Respond in good-faith to Interrogatory #1 in the Third Set of Interrogatories, by identifying persons who, to the best recollection of Legislative Defendants, meet the criteria laid out Interrogatory #1 in the Third Set of Interrogatories;
- Respond in good-faith to Interrogatories #2 in the First and Third Set of Interrogatories, by providing detailed descriptions of the nature and substance of each person’s involvement in the 2017 redistricting process.

- Respond in good-faith to Interrogatories #3 and #4 in the First and Third Set of Interrogatories, based on any additional names provided in response to Interrogatories #1 in the First and Third Set of Interrogatories.

**B. Interrogatories #5 and #7 from First Set of Interrogatories**

Interrogatory #5 from the First Set of Interrogatories asks Legislative Defendants to:

Identify each person or entity with whom you communicated before August 10, 2017 regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising district boundaries for the 2017 Plans.

Ex. C at 8. Interrogatory #7 asked the same question but for August 10 to 17, 2017. *Id.* at 10.

In their January 5 response, Legislative Defendants provided the following answer to Interrogatory #5: “Representative Lewis and Senator Hise consulted with legal counsel during the 2017 redistricting process. Both of them also likely consulted with members of the General Assembly and the public.” Ex. C at 8. The answer to Interrogatory #7 merely cross-referenced the response to Interrogatory #5. *Id.* at 10.

As Plaintiffs explained, these responses improperly failed to list each “legal counsel” and each “member[] of the General Assembly and the public” with whom Legislative Defendants communicated. Ex. E at 4-6. The responses also were deficient because they were not specific to the time periods of before August 10, 2017 (for Interrogatory #5) and from August 10 to 17, 2017 (for Interrogatory #7). *Id.* Legislative Defendants countered that it was “simply not feasible for Defendants to remember each and every member of the public” with whom they communicated about the 2017 Plans during these time periods. Ex. F at 2. Legislative Defendants also asserted in response to a different Interrogatory that “[t]he identity of legal counsel providing advice to Defendants is privileged” and asked Plaintiffs to identify any authority to the contrary. *Id.* at 3.

During the parties' January 25 meet and confer, Plaintiffs pointed Legislative Defendants to *State v. Tate*, 294 N.C. 189, 192-93, 239 S.E.2d 821, 824 (1978), which held that the attorney-client privilege extends "only to the substance of matters communicated" between an attorney and client, and does not shield from disclosure the identities of attorneys or clients. Plaintiffs also explained that, while of course Legislative Defendants did not have to list "each and every" person with whom they communicated about the 2017 Plans during these time periods if they could not remember all such persons, they did have to list all persons with whom they actually do remember communicating during these time periods or could refresh their recollections through a reasonable search. Legislative Defendants agreed to revisit and supplement their responses to Interrogatories #5 and #7 by February 1. Ex. G at 1.

But again, Legislative Defendants missed that agreed-upon deadline, instead delaying by weeks saying they needed more time. Ex. H. When Legislative Defendants ultimately did supplement their responses on February 15, they provided no new substantive information. They merely added that they "specifically counsel of record in the *Covington* matter," and their only further addition was to say that "the answer to this interrogatory may be ascertained from a review of the documents produced in this matter." Ex. J at 8, 10.

This is not a good faith response. Legislative Defendants missed agreed-upon deadlines by weeks only to provide supplemental answers that could have been provided in minutes. And the supplemental answers are plainly deficient; Legislative Defendants cannot put the burden on Plaintiffs to "ascertain[]" the names of relevant persons "from a review of documents." Ex. J at 8, 10. Legislative Defendants must answer these Interrogatories themselves within the statutorily-provided deadline, which has now passed by a month and a half.

Plaintiffs therefore respectfully request that the Court order Legislative Defendants promptly to respond in good-faith to Interrogatories #5 and #7 by identifying all persons with whom they recall communicating, or can recall communicating through a reasonable search, about the 2017 redistricting before August 10, 2017, and between August 10 and 17, 2017, including the specific names of any staff, counsel, consultants, or any other persons.

**C. Interrogatory #12 from First Set of Interrogatories**

Interrogatory #12 in the First Set of Interrogatories asks Legislative Defendants to:

Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

Ex. C at 15.

In their January 4 response, Legislative Defendants objected that the terms “formulas and algorithms” are “vague.” *Id.* At the January 25 meet and confer. Plaintiffs explained that “formulas and algorithms” carry their ordinary dictionary meaning, and noted that, in drawing congressional districts in 2016, Dr. Hofeller had used a specific formula to take a weighted average of election results to measure the partisanship of precincts and districts. Legislative Defendants’ counsel asserted that, even though this formula was called the “Hofeller formula” throughout the litigation regarding the congressional districts,<sup>2</sup> counsel did not consider it to be a real “formula” and so had not understand that Plaintiffs were requesting information of that nature. Plaintiffs reaffirmed that a weighted average is a formula. Plaintiffs further noted that Legislative Defendants had simply ignored the first clause of Interrogatory #12, which asks “how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans,” irrespective of formulas or algorithms. Ex. C at 15.

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<sup>2</sup> See, e.g., *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 894 (M.D.N.C. 2018) (describing “Dr. Hofeller’s seven-race formula”).

Legislative Defendants committed to revisit and supplement their response to Interrogatory #12 by February 1. Ex. G at 2.

Legislative Defendants missed that deadline saying they needed more time (*see* Ex. H), and when they finally responded on February 15, the only addition to their answer was: “Dr. Hofeller may have used elections results in addition to the other criteria in drawing the Plans. To the best of Defendants’ memory, the Maptitude software used by Dr. Hofeller contained the ability to calculate the average percentage vote of ten statewide elections for districts.” Ex. J at 15. This response—which states only that particular software has “the ability” to calculate an average of ten numbers—is utterly deficient and could have been provided within minutes.

Plaintiffs therefore respectfully request that the Court order Legislative Defendants promptly to:

- Answer in good-faith the first clause of Interrogatory #12, which asks “how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans,” irrespective of formulas or algorithms. For instance, if Legislative Defendants or Dr. Hofeller prioritized more recent elections results (e.g., 2016 results) over older results (e.g., 2012 results), that would be responsive and Plaintiffs are entitled to that information and associated details.
- Provide in good-faith the specific formulas or algorithms that Legislative Defendants or Dr. Hofeller used to develop partisanship scores or estimates for precincts or voting districts. For instance, if Dr. Hofeller used a specific formula to take a weighted average of elections results—like he did in 2016 in drawing the congressional districts—that would be responsive and Plaintiffs are entitled to that information and associated details.

**D. Interrogatory #13 from First Set of Interrogatories**

Interrogatory #13 in the First Set of Interrogatories asks Legislative Defendants to:

Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2017 Plans.”

Ex. C at 16.



In their January 4 response, Legislative Defendants objected that the terms “partisanship scores or estimates” are “vague” and then cross-referenced their responses to other interrogatories. *Id.* Plaintiffs thereafter explained that “partisanship scores or estimates” refers to “any number assigned to a precinct or voting district as a measure or proxy of that precinct’s or voting district’s partisan voting history, partisan leanings, partisan preferences, and/or expected partisan vote share for state House or state Senate elections.” Ex. E at 8. Plaintiffs reiterated this definition of “partisanship scores or estimates” on the parties’ January 25 meet and confer, Ex. G at 2, and Legislative Defendants agreed to revisit and supplement their response to Interrogatory #13 by February 1, *id.*

Legislative Defendants missed that agreed-upon deadline because they purportedly needed more time to respond (*see* Ex. H), and when they finally did provide supplemental responses to the First Set of Interrogatories on February 15, their response to Interrogatory was identical to their original response: they again asserted that “partisanship scores or estimate” is vague and provided no response other than directing Plaintiffs to responses to other interrogatories, none of which were responsive to Interrogatory #13. Ex. J at 16. Legislative Defendants gave this response even though Plaintiffs had provided a detailed definition of the phrase in Plaintiffs’ January 15 letter, Ex. E at 8, and even though Legislative Defendants had not suggested at the parties’ January 25 meet and confer that they remained uncertain about what the phrase meant in light of Plaintiffs’ detailed definition. Instead, they committed to provide a supplemental response.

This is gamesmanship. Had Legislative Defendants told Plaintiffs they were not going to change their response to this Interrogatory by the agreed-upon deadline of February 1—much less by the unilaterally extended deadline of February 15—Plaintiffs would have moved to

compel immediately. The response to this Interrogatory is highly pertinent to the work of Plaintiffs' experts. But Legislative Defendants instead delayed for weeks and now have simply refused to provide any substantive answer to this Interrogatory.

Plaintiffs therefore respectfully request that the Court order Legislative Defendants promptly to answer Interrogatory #13, in good-faith, using the definition of "partisanship scores or estimates" that Plaintiffs previously provided to Legislative Defendants: "any number assigned to a precinct or voting district as a measure or proxy of that precinct's or voting district's partisan voting history, partisan leanings, partisan preferences, and/or expected partisan vote share for state House or state Senate elections."

**E. Interrogatories #14-18 from First Set of Interrogatories**

Interrogatories #14-18 of Plaintiffs' First Set of Interrogatories ask for information related to the "2011 Unchanged Districts," which Plaintiffs defined as "the state legislative districts enacted by the General Assembly under the 2011 Plans that were not altered under the 2017 Plans, including all drafts thereof." Ex. A at 2. Plaintiffs seek, *inter alia*, "all criteria" used in drawing the 2011 Unchanged Districts (Interrogatory #14), how all criteria used to draw the 2011 Unchanged Districts were "weighted or prioritized" (Interrogatory #15), all "elections data and measures of partisanship" that were used in drawing the 2011 Unchanged Districts (Interrogatory #16), how elections data and measures of partisanship were "weighted or prioritized" in drawing the 2011 Unchanged Districts" (Interrogatory #17), and "all partisanship scores or estimates for precincts or voting districts" that were used in drawing the 2011 Unchanged Districts (Interrogatory #18). Ex. C at 17-21.

In their January 4 response, Legislative Defendants responded to all of these Interrogatories by asserting that, "[i]n 2017, the legislature did not change the[se] districts." *Id.*

Plaintiffs thereafter explained that Interrogatories #14-18 did not limit the period of the requests to what occurred “in 2017,” but rather encompassed the drawing of the 2011 Unchanged Districts at any time, including in 2011 when the districts were originally created. Ex. E at 8. Legislative Defendants then abandoned their initial response and asserted that “[t]he information sought in these requests is public record and already produced to Plaintiffs’ counsel in previous litigation.” Ex. F at 4. At the parties’ January 25 meet and confer, Legislative Defendants’ counsel asked whether Plaintiffs in fact were asking Legislative Defendants to provide information from 2011, and Plaintiffs responded that they were and that Legislative Defendants had a legal obligation to answer Interrogatories #14-18 to the best of their recollection or from sources they could reasonably obtain. Legislative Defendants committed to revisit and supplement their responses to Interrogatories #14-18 by February 8. Ex. G at 2.

That deadline came and went, and when Legislative Defendants finally supplemented their responses on February 15, they merely said: “[T]he answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.” Ex. J at 17-21.

These responses are patently deficient for multiple reasons. For one, it is Legislative Defendants’ legal obligation to provide answers to Interrogatories; they may not tell the opposing party to “ascertain” the answers from tens of thousands of pages of documents. Moreover, as this Court is aware, the *Dickson* litigation did not involve partisan gerrymandering claims, and therefore the litigation did not generate information responsive to Interrogatories #14-18. Indeed, the “2011 Unchanged Districts” are entirely different districts from the districts

that the *Dickson* plaintiffs alleged were racially gerrymandered. The “2011 Unchanged Districts” thus were not a focus of discovery in *Dickson*.

Legislative Defendants have had Interrogatories #14-18 since November 13. They had an obligation to provide answers by January 4 and then again by February 8, and yet they have provided *no information* to date. Plaintiffs therefore respectfully request that the Court order Legislative Defendants to promptly provide full and detailed answers to Interrogatories #14-18.

#### **IV. The Court Should Award Fees and Expenses and Other Appropriate Relief**

Rule 37(a)(4) provides that, where a motion to compel is granted, “the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion . . . to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney’s fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.” Thus, an award of fees and expenses is “mandatory” upon granting a motion to compel, *Graham v. Rogers*, 121 N.C. App. 460, 463, 466 S.E.2d 290, 293 (1996), unless the party that resisted discovery can show its opposition was “substantially justified” or awarding fees and expenses otherwise would be unjust. “[T]he burden of proving the non-compliance was justified” rests with the party compelled to produce discovery. *Graham*, 121 N.C. App. at 4635, 466 S.E.2d at 294. “The trial court also retains inherent authority to impose sanctions for discovery abuses beyond those enumerated in Rule 37.” *Cloer v. Smith*, 132 N.C. App. 569, 573, 512 S.E.2d 779, 782 (1999).

Legislative Defendants cannot meet their burden to show that their failure to produce responsive information and records was “substantially justified.” With respect to the RFPs, Legislative Defendants have simply ignored their discovery obligations. They have failed to produce responsive records, have not provided a privilege log, and have reneged on

commitments they made to provide information on the search process used, including to identify custodians searched. Ex. G at 2. As of this filing, Legislative Defendants have refused to even indicate when they will have an update on their search and production. All of this is despite the fact that the RFPs were served more than three months ago and the responses were due a month and a half ago. There is no justification for such behavior.

With respect to the Interrogatories, Legislative Defendants not only have clearly failed to provide adequate responses—including basic information such as the names of persons involved in the redistricting process—but they have engaged in extreme gamesmanship. Legislative Defendants committed to provide answers and supplementations to Plaintiffs’ original interrogatories and the four new interrogatories by February 1. Ex. G at 1-2. Legislative Defendants missed that deadline by weeks, repeatedly telling Plaintiffs that they needed more time and were “working diligently” to provide answers. Ex. H. Only after Plaintiffs agreed to a case schedule that provided upcoming deadlines for Plaintiffs’ expert reports did Legislative Defendants then provide answers that offered almost no new substantive information. This is not a legitimate way to conduct discovery.

An award of fees and expenses is therefore warranted. This Court should award Plaintiffs their fees and expenses for preparing this motion and also for the time preparing for and participating in the January 25 meet and confer, which led to a series of agreements that Legislative Defendants ignored for the purposes of delay.

### **CONCLUSION**

WHEREFORE, Plaintiffs request that the Court grant this motion and order Legislative Defendants to promptly provide full responses to the overdue discovery requests by the dates set forth above, and award Plaintiffs fees and expenses. The matters raised in this motion are time-

sensitive given the March 22 deadline for Plaintiffs' expert reports, and Plaintiffs therefore request that the Court order Legislative Defendants to respond to this motion by February 22, 2019. Plaintiffs certify that they met and conferred in good faith with Legislative Defendants on the issues raised in this motion in an attempt to secure the information without court action.

Respectfully submitted this the 19th day of February, 2019

**POYNER SPRUILL LLP**

By: Caroline P. Moder

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*Counsel for Common Cause and the  
Individual Plaintiffs*

*\*Pro Hac Vice motions pending*

### CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

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*Counsel for the Legislative Defendants*

This the 19<sup>th</sup> day of February, 2019.



Caroline P. Mackie



# **EXHIBIT A**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

18-CVS-014001

COMMON CAUSE et al.,

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' FIRST SET OF  
INTERROGATORIES TO ALL  
DEFENDANTS**

NOW COME PLAINTIFFS, by and through their undersigned counsel, and hereby serve upon the Defendants ("Defendants" or "You") the following Plaintiffs' First Set of Interrogatories ("Request") pursuant to Rules 26 and 33 of the North Carolina Rules of Civil Procedure. Unless otherwise stated, you are required to provide a complete written response to each interrogatory, under oath, within 30 days after the service of this Request, except that you may serve a response within 45 days after service of the Summons and Complaint upon you. If you object to a specific interrogatory, the reasons for the objection must be stated with particularity. If objection is made to part of an interrogatory, the part shall be specified.

You are required, when responding to this Request, to furnish all information available to you, to your attorneys or agents, or to anyone acting on your behalf or on behalf of your attorneys, or your agents.

For purposes of responding to this Request, you shall use the instructions and definitions contained herein. The Request shall be continuing in nature until the date of trial, and Defendants are required to serve supplemental responses as additional information may become available to them.

**INSTRUCTIONS**

For the purposes of this Request, the following instructions shall apply as set forth below except as otherwise required by context:

1. **BE ADVISED** that under Rule 37 of the North Carolina Rules of Civil Procedure, if you fail to respond to a request made herein under Rule 33, or if you give an evasive or incomplete response, the Plaintiffs may move for a court order compelling you to

respond. If such motion is granted, the court may require you to pay the reasonable costs incurred in obtaining the order, including attorneys' fees. Failure to comply with such a court order may result in further sanctions or in contempt of court.

2. Words used in the singular number shall include the plural number, and words used in the plural number shall refer to the singular number as well.
3. If any Request is objected to on the grounds of its being overly broad or unduly burdensome, state the manner in which it is overly broad or unduly burdensome and respond to the Request as narrowed to conform to such objection.
4. **If any documents, communications, ESI, or responses are withheld on the ground of any privilege, identify the following:**
  - A. the names and addresses of the speaker or author of the communication or document that forms the basis for the withheld response;
  - B. the date of the communication or document;
  - C. the name and address of any person to whom the communication was made or the document was sent or to whom copies were sent or circulated at any time;
  - D. the type of document or communication (e.g., letter, memorandum, invoice, contract, etc.);
  - E. the name and address of any person currently in possession of the document or a copy thereof; and
  - F. the privilege claimed and specific grounds therefor.

### **DEFINITIONS**

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

1. "2011 Plans" mean the 2011 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in November 2011, including all drafts thereof.
2. "2017 Plans" means the 2017 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that was passed by the North Carolina General Assembly in August 2017, including all drafts thereof.
3. "2011 Unchanged Districts" means the state legislative districts enacted by the General Assembly under the 2011 Plans that were not altered under the 2017 Plans, including all drafts thereof.

4. The “2017 Plans Criteria” refer to the criteria that the North Carolina House and Senate Redistricting Committees adopted for the 2017 Plans.
5. “Individual Defendants” refers to Senator Ralph E. Hise, Jr.; Representative David R. Lewis; President Pro Tempore Philip E. Berger; Speaker Timothy K. Moore; Chairman Andy Penry, Chairman of the North Carolina State Board of Elections and Ethics Enforcement; Joshua Malcolm, Vice-Chair of the North Carolina State Board of Elections & Ethics Enforcement; Ken Raymond, Secretary of the North Carolina State Board of Elections & Ethics Enforcement; Stella Anderson, Member of the North Carolina State Board of Elections & Ethics Enforcement; Damon Circosta, Member of the North Carolina State Board of Elections & Ethics Enforcement; Stacy “Four” Eggers IV, Member of the North Carolina State Board of Elections & Ethics Enforcement; Jay Hemphill, Member of the North Carolina State Board of Elections & Ethics Enforcement; Valerie Johnson, Member of the North Carolina State Board of Elections & Ethics Enforcement; John Lewis, Member of the North Carolina State Board of Elections & Ethics Enforcement; and their predecessors in office.
6. “Entity Defendants” refers to The State of North Carolina and the North Carolina State Board of Elections and Ethics Enforcement.
7. “Defendants” refers to the Individual Defendants and the Entity Defendants.
8. With respect to the Individual Defendants, “You” and “Your” refers to the Individual Defendants and their predecessors in office, attorneys, representatives, agents, and others acting on their behalf.
9. With respect to the Entity Defendants, “You” and “Your” refers to the Entity Defendants and all branches of government, including departments, agencies, committees, and subcommittees, as well as attorneys, representatives, members, employees, agents, and others acting on behalf of the Entity Defendants.
10. “Document” is used in its broadest sense and is intended to be comprehensive and to include, without limitation, a record, in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) it is maintained, and includes originals and each and every non-identical copy of all writings of every kind, including drafts, legal pleadings, brochures, circulars, advertisements, letters, internal memoranda, minutes, notes or records of meetings, reports, comments, affidavits, statements, summaries, messages, worksheets, notes, correspondence, diaries, calendars, appointment books, registers, travel records, tables, calculations, books of account, budgets, bookkeeping or accounting records, telephone records, tables, stenographic notes, financial data, checks, receipts, financial statements, annual reports, accountants’ work papers, analyses, forecasts, statistical or other projections, newspaper articles, press releases, publications, tabulations, graphs, charts, maps, public records, telegrams, books, facsimiles, agreements, opinions or reports of experts, records or transcripts of conversations, discussions, conferences, meetings or interviews, whether in person or by telephone or by

any other means and all other forms or types of written or printed matter or tangible things on which any words, phrases, or numbers are affixed, however produced or reproduced and wherever located, which are in Your possession, custody or control. The term "Document" includes electronic mail and attachments, data processing or computer printouts, tapes, documents contained on floppy disks, hard disks, computer hard drives, CDs, and DVDs, or retrieval listings, together with programs and program documentation necessary to utilize or retrieve such information, and all other mechanical or electronic means of storing or recording information, as well as tape, film or cassette sound or visual recordings and reproduction for film impressions of any of the aforementioned writings.

11. "Communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons, by any means or mode of conveying information including, but not limited to, telephone, television, or telegraph or electronic mail.
12. A request seeking production of communications between you and an individual or entity includes communications between you and the individual or entity's agents, officers, members, employees, consultants, or representatives.

### **INTERROGATORIES**

1. Identify each person who, to your knowledge, had any involvement in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

#### **RESPONSE:**

2. For each person identified in response to Interrogatory 1, describe that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

#### **RESPONSE:**

3. For each person identified in response to Interrogatories 1 and 2, provide the name of any entity with which each such person was affiliated at the time of that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:**

4. For each person identified in response to Interrogatories 1 and 2, provide the name of the entity or entities that paid that person's fees or expenses for his or her work in drawing or revising district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:**

5. Identify each person or entity with whom you communicated before August 10, 2017 regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:**

6. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans before August 10, 2017.

**RESPONSE:**

7. Identify each person or entity with whom you communicated, between August 10, 2017 and August 21, 2017, regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans.

**RESPONSE:**

8. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10, 2017 and August 21, 2017.

**RESPONSE:**

9. Identify and describe all computers, software, programs, applications, and statistical packages used in developing the 2017 Plans. For each, identify and describe the owner of the computer, software, program, application, or statistic package and who paid for it.

**RESPONSE:**

10. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:**

11. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the 2017 Plans, including but not limited to the 2017 Plans Criteria, were prioritized or weighted in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:**

12. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

**RESPONSE:**

13. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:**

14. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE:**

15. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the for the 2011 Unchanged Districts were prioritized or weighted in drawing or revising district boundaries for the 2011 Unchanged Districts.



**RESPONSE:**

16. Identify and describe all elections data and other measures of partisanship that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE:**

17. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2011 Unchanged Districts, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

**RESPONSE:**

18. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

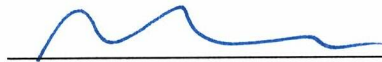
**RESPONSE:**

Dated: November 13, 2018

Respectfully submitted,

**POYNER SPRUILL LLP**

By:

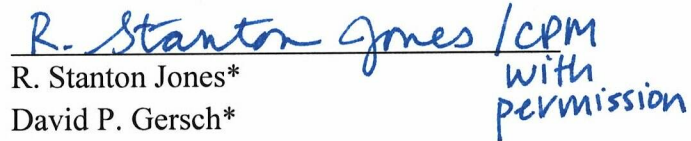


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\* *Pro hac vice motions forthcoming*

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing *Plaintiffs' First Set of Interrogatories to All Defendants and Plaintiffs' First Set of Requests for Production of Documents to All Defendants* by hand delivery, addressed to the following persons at the following addresses which are the last addresses known to me:

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*Counsel for the State of North Carolina*

Josh Lawson  
NC State Board of Elections and Ethics Enforcement  
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*Counsel for the State Board of Elections and Ethics Enforcement and its members*

This the 13<sup>th</sup> day of November, 2018.

**POYNER SPRUILL LLP**



Caroline P. Mackie

# **EXHIBIT B**

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

SUPERIOR COURT DIVISION

18-CVS-014001

COMMON CAUSE et al.,

Plaintiffs,

v.

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

Defendants.

**PLAINTIFFS' FIRST SET OF  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO ALL DEFENDANTS**

NOW COME PLAINTIFFS, by and through their undersigned counsel, and hereby serve upon the Defendants ("Defendants" or "You") the following Plaintiffs' First Set of Requests for Production of Documents ("Request") pursuant to Rules 26 and 34 of the North Carolina Rules of Civil Procedure. Unless otherwise stated, you are required to produce the following documents and things requested for inspection and copying at the offices of Poyner Spruill LLP, 301 Fayetteville Street, Suite 1900, Raleigh, North Carolina within 30 days after the services of this Request, except that you may serve a response within 45 days after service of the Summons and Complaint upon you. The response to the Request must state that inspection, copying, and related activities will be permitted as requested with respect to each item or category of document, unless the request is objected to, in which event, the reasons for the objection must be stated with particularity.

You are required, when responding to this Request, to furnish all information available to you, to your attorneys or agents, or to anyone acting on your behalf or on behalf of your attorneys, or your agents. Unless stated otherwise, this Request calls for the production of all responsive documents in your possession, custody, or control without regard to where the documents may be physically located, and without regard to who prepared or delivered the documents.

For purposes of responding to this Request, you shall use the instructions and definitions contained herein. The Request shall be continuing in nature until the date of trial.

## INSTRUCTIONS

For the purposes of this Request, the following instructions shall apply as set forth below except as otherwise required by context:

1. **BE ADVISED** that under Rule 37 of the North Carolina Rules of Civil Procedure, if you fail to respond to a request made herein under Rule 34, or if you give an evasive or incomplete response, the Plaintiffs may move for a court order compelling you to respond. If such motion is granted, the court may require you to pay the reasonable costs incurred in obtaining the order, including attorneys' fees. Failure to comply with such a court order may result in further sanctions or in contempt of court.
2. **Electronically-stored information:** This Request includes requests to permit the forensic copying and examination of electronically stored information ("ESI"), as well as for the production of ESI. The purpose of obtaining ESI from you is to obtain all metadata, residual data, file fragments, and other information that is not reasonably accessible for forensic examination of authenticity. Any storage device that contains, or may contain, ESI requested shall be produced for forensic copying and examination. Forensic copying usually may be done on-site, without taking possession of your computing devices, at minimal inconvenience, cost, or interruption to you. The forensic copying will eliminate the need for you to search all storage devices or sift through a vast amount of information. Once forensic copies are made, the parties may agree on search terms to reduce costs and to preserve privacy of non-discoverable information. You are encouraged to comply reasonably and to confer immediately with the undersigned counsel for an agreement on each party's respective rights and responsibilities.
3. Words used in the singular number shall include the plural number, and words used in the plural number shall refer to the singular number as well.
4. If any Request is objected to on the grounds of its being overly broad or unduly burdensome, state the manner in which it is overly broad or unduly burdensome and respond to the Request as narrowed to conform to such objection.
5. For any document no longer in your custody or control, identify the document, state whether it is missing, lost, destroyed, transferred to others or otherwise disposed of, and identify any person who currently has custody or control of the document or who has knowledge of the contents of the document.
6. For any ESI no longer in your custody or control, identify the type of ESI, state whether it is missing, lost, destroyed, transferred to others or otherwise disposed of, and the approximate date such ESI became missing, lost, destroyed, or transferred, and identify any person who currently has custody or control of the ESI or who has knowledge of the contents of same.
7. **If any documents, communications, ESI, or responses are withheld on the ground of any privilege, identify the following:**

- A. the names and addresses of the speaker or author of the communication or document;
- B. the date of the communication or document;
- C. the name and address of any person to whom the communication was made or the document was sent or to whom copies were sent or circulated at any time;
- D. the type of document or communication (e.g., letter, memorandum, invoice, contract, etc.);
- E. the name and address of any person currently in possession of the document or a copy thereof; and
- F. the privilege claimed and specific grounds therefor.

### **DEFINITIONS**

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

- 1. “2011 Plans” mean the 2011 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in November 2011, including all drafts thereof.
- 2. “2017 Plans” mean the 2017 redistricting plans for the North Carolina House of Representatives and the North Carolina Senate that were passed by the North Carolina General Assembly in August 2017, including all drafts thereof.
- 3. “2011 Unchanged Districts” means the state legislative districts enacted by the General Assembly under the 2011 Plans that were not altered under the 2017 Plans, including all drafts thereof.
- 4. The “2017 Plans Criteria” refer to the criteria that the North Carolina House and Senate Redistricting Committees adopted for the 2017 Plans.
- 5. “Individual Defendants” refers to Senator Ralph E. Hise, Jr.; Representative David R. Lewis; President Pro Tempore Philip E. Berger; Speaker Timothy K. Moore; Chairman Andy Penry, Chairman of the North Carolina State Board of Elections and Ethics Enforcement; Joshua Malcolm, Vice-Chair of the North Carolina State Board of Elections & Ethics Enforcement; Ken Raymond, Secretary of the North Carolina State Board of Elections & Ethics Enforcement; Stella Anderson, Member of the North Carolina State Board of Elections & Ethics Enforcement; Damon Circosta, Member of the North Carolina State Board of Elections & Ethics Enforcement; Stacy “Four” Eggers

IV, Member of the North Carolina State Board of Elections & Ethics Enforcement; Jay Hemphill, Member of the North Carolina State Board of Elections & Ethics Enforcement; Valerie Johnson, Member of the North Carolina State Board of Elections & Ethics Enforcement; John Lewis, Member of the North Carolina State Board of Elections & Ethics Enforcement; and their predecessors in office.

6. “Entity Defendants” refers to The State of North Carolina and the North Carolina State Board of Elections and Ethics Enforcement.
7. “Defendants” refers to the Individual Defendants and the Entity Defendants.
8. With respect to the Individual Defendants, “You” and “Your” refers to the Individual Defendants and their predecessors in office, attorneys, representatives, agents, and others acting on their behalf.
9. With respect to the Entity Defendants, “You” and “Your” refers to the Entity Respondents and all branches of government, including departments, agencies, committees, and subcommittees, as well as attorneys, representatives, members, employees, agents, and others acting on behalf of the Entity Defendants.
10. “Document” is used in its broadest sense and is intended to be comprehensive and to include, without limitation, a record, in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) it is maintained, and includes originals and each and every non-identical copy of all writings of every kind, including drafts, legal pleadings, brochures, circulars, advertisements, letters, internal memoranda, minutes, notes or records of meetings, reports, comments, affidavits, statements, summaries, messages, worksheets, notes, correspondence, diaries, calendars, appointment books, registers, travel records, tables, calculations, books of account, budgets, bookkeeping or accounting records, telephone records, tables, stenographic notes, financial data, checks, receipts, financial statements, annual reports, accountants’ work papers, analyses, forecasts, statistical or other projections, newspaper articles, press releases, publications, tabulations, graphs, charts, maps, public records, telegrams, books, facsimiles, agreements, opinions or reports of experts, records or transcripts of conversations, discussions, conferences, meetings or interviews, whether in person or by telephone or by any other means and all other forms or types of written or printed matter or tangible things on which any words, phrases, or numbers are affixed, however produced or reproduced and wherever located, which are in Your possession, custody or control. The term “Document” includes electronical mail and attachments, data processing or computer printouts, tapes, documents contained on floppy disks, hard disks, computer hard drives, CDs, and DVDs, or retrieval listings, together with programs and program documentation necessary to utilize or retrieve such information, and all other mechanical or electronic means of storing or recording information, as well as tape, film or cassette sound or visual recordings and reproduction for film impressions of any of the aforementioned writings.



11. “Communication” means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreements, and other understandings between or among two or more persons, by any means or mode of conveying information including, but not limited to, telephone, television, or telegraph or electronic mail.
12. A request seeking production of communications between you and an individual or entity includes communications between you and the individual or entity’s agents, officers, members, employees, consultants, or representatives.

### **REQUESTS**

1. All documents and communications referring or relating to the 2017 Plans, including, but not limited to:
  - a. All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2017 Plans.
  - b. All documents referring or relating to the 2017 Plans Criteria.
  - c. All documents referring or relating to how each 2017 Plans Criterion was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
  - d. All documents referring or relating to how each 2017 Plans Criterion affected the 2017 Plans, including any rule or principle guiding the use of each criterion in developing the 2017 Plans, or any specific choices made in constructing a district based on each criterion.
  - e. All documents referring or relating to the prioritization or weighting of the 2017 Plans criteria in developing the 2017 Plans.
  - f. All communications since January 1, 2015 with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2017 Plans.
  - g. All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2017 Plans.
  - h. All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2017 Plans.

## RESPONSE:

2. All documents and communications since November 1, 2010 referring or relating to the 2011 Unchanged Districts, including, but not limited to:
  - a. All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2011 Unchanged Districts.
  - a. All documents referring or relating to the criteria considered or using in creating the 2011 Unchanged Districts.
  - b. All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.
  - c. All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts affected the 2011 Unchanged Districts, including any rule or principle guiding the use of each criterion in developing the 2011 Unchanged Districts, or any specific choices made in constructing a district based on each criterion.
  - d. All documents referring or relating to the prioritization or weighting of each of the criteria considered or used in creating the 2011 Unchanged Districts.
  - e. All communications with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2011 Unchanged Districts.
  - f. All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2011 Unchanged Districts.
  - g. All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2011 Unchanged Districts.
3. All documents and communications since January 1, 2015 not encompassed within Requests 1 or 2 that refer or relate to the development of new state legislative districts for the North Carolina House of Representatives and the North Carolina Senate.

## RESPONSE:

4. All non-privileged documents and communications since January 1, 2015 not encompassed within Requests 1, 2, or 3 that refer or relate to the litigation surrounding, or the legal status of, the 2011 Plans.

**RESPONSE:**

Dated: November 13, 2018

Respectfully submitted,

**POYNER SPRUILL LLP**

By: 

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*Counsel for Common Cause and the  
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\* *Pro hac vice motions forthcoming*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing *Plaintiffs' First Set of Interrogatories to All Defendants and Plaintiffs' First Set of Requests for Production of Documents to All Defendants* by hand delivery, addressed to the following persons at the following addresses which are the last addresses known to me:

Alexander Peters  
NC Department of Justice  
P.O. Box 629  
Raleigh, NC 27602  
*Counsel for the State of North Carolina*

Josh Lawson  
NC State Board of Elections and Ethics Enforcement  
430 N. Salisbury St.  
Suite 3128  
Raleigh, NC 27603-5918  
*Counsel for the State Board of Elections and Ethics  
Enforcement and its members*

This the 13<sup>th</sup> day of November, 2018.

**POYNER SPRUILL LLP**

Caroline P. Mackie  
Caroline P. Mackie

# **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:18-CV-589

COMMON CAUSE et. al.	)
	)
	)
Plaintiffs,	)
	)
v.	)
	)
REPRESENTATIVE DAVID R. LEWIS, IN HIS	)
OFFICIAL CAPACITY AS SENIOR CHAIRMAN	)
OF THE HOUSE SELECT COMMITTEE ON	)
REDISTRICTING; et al.	)
	)
Defendants.	)

**LEGISLATIVE DEFENDANTS' AND STATE OF NORTH CAROLINA'S  
OBJECTIONS AND RESPONSES TO PLAINTIFFS'  
FIRST SET OF INTERROGATORIES**

Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy K. Moore, and President Pro Tempore of the North Carolina Senate, Philip E. Berger ("Legislative Defendants") and the State of North Carolina (collectively referred to as "Defendants"), by and through undersigned counsel, serve their objections and responses to Plaintiffs' First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

Defendants make the following answers, responses, and objections to Plaintiffs' First Set of Interrogatories ("Interrogatories"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all

such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from: (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such, and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Interrogatories. These responses are subject to amendment and supplementation as Defendants acquire additional information and completes their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Interrogatories were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Interrogatory should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Interrogatory or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Interrogatory is not intended to be, and shall not be, construed as a waiver by Defendants of any part of any objection to any Interrogatory.



Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules. Defendants further object that under the Federal Rules, these Interrogatories are premature, as no discovery may be conducted until completion of a Rule 26(f) conference

Since the Federal Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

### **INTERROGATORIES**

1. Identify each person who, to your knowledge, had any involvement in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE: Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, information protected by legislative privilege, and information that constitutes work product. Defendants also object to this interrogatory in that "involvement" is vague.**

Without waiving these objections, the 2017 plans were drawn by Dr. Thomas Hofeller, under the direction of Representative David Lewis and Senator Ralph Hise. Representative Lewis and Senator Hise were responsible for developing and proposing the criteria adopted by the Redistricting Committees that were used by Dr. Hofeller to draw the 2017 plans. Representative Nelson Dollar had input revising the 2017 House Plan, and Senators Bishop, Meredith, Wade, and Alexander were consulted on some revisions to the 2017 Senate Plan. In addition, all members of the General Assembly had opportunities to revise the plans through amendments during the legislative process and members of the public had access to publicly available computer terminals to draft plans. Moreover, the General Assembly authorized the minority caucus to retain consultants to assist with mapdrawing and Defendants believe that one or more consultants was so retained, including Kareem Crayton.

2. For each person identified in response to Interrogatory 1, describe that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE: See response to Interrogatory No. 1**

3. For each person identified in response to Interrogatories 1 and 2, provide the name of any entity with which each such person was affiliated at the time of that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE: Defendants object to Interrogatory 3 on the grounds that “entity with which each such person was affiliated” is both unduly vague and overbroad since the persons in question may have been affiliated with various entities that had nothing to do with redistricting.**

4. For each person identified in response to Interrogatories 1 and 2, provide the name of the entity or entities that paid that person's fees or expenses for his or her work in drawing or revising district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** Representatives Lewis and Dollar and Senator Hise were not paid any fees for their involvement with the 2017 plans. Dr. Hofeller's fees were paid by the North Carolina General Assembly as he worked as a consultant to Representative Lewis and Senator Hise. Defendants also believe that the fees of the consultant retained by the minority caucus, Kareem Crayton, were paid by the General Assembly.

5. Identify each person or entity with whom you communicated before August 10, 2017 regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE: Representative Lewis and Senator Hise consulted with legal counsel during the 2017 redistricting process. Both of them also likely consulted with members of the General Assembly and the public.**

6. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans before August 10, 2017.

**RESPONSE: To the best recollection of Defendants, no drafts of the 2017 plans existed prior to August 10, 2017.**

7. Identify each person or entity with whom you communicated, between August 10, 2017 and August 21, 2017, regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans.

**RESPONSE: See objections and response to Interrogatory No. 5.**



8. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10, 2017 and August 21, 2017.

**RESPONSE:** To the best recollection of the defendants, it is likely that Representative Lewis, Representative Dollar, and Senator Hise viewed all or part of the 2017 plans between August 10, 2017 and August 21, 2017. In addition, the draft 2017 plans were released publicly on August 19, 2017 and accordingly available to every member of the public.

9. Identify and describe all computers, software, programs, applications, and statistical packages used in developing the 2017 Plans. For each, identify and describe the owner of the computer, software, program, application, or statistic package and who paid for it.

**RESPONSE: To the knowledge of the defendants, the 2017 plans were drawn on a computer owned by the General Assembly. Dr. Hofeller used the Maptitude software program to draw the plans. A license for this program was also purchased by the General Assembly.**

10. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** The criteria used to draw the 2017 plans is the criteria adopted by the Redistricting Committees, is a matter of public record, and has already been provided to Plaintiffs' counsel.

11. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the 2017 Plans, including but not limited to the 2017 Plans Criteria, were prioritized or weighted in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** All constitutionally required criteria had priority over all other criteria including equal population between districts, the *Stephenson* county grouping formula, and the requirement of contiguity. Other factors were considered only when the consideration of such criteria did not conflict with constitutional criteria and could be harmonized with the other criteria. Use of election data was not the predominant criterion used to draft the 2017 plans.

12. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

**RESPONSE:** Defendants object to this interrogatory on the grounds that “formulas or algorithms” are vague. Defendants are not aware of any “formulas or algorithms” used to draw the plans. After the plans were developed, reports were prepared showing election results in each district for certain statewide elections. These reports are part of the public record and have already been produced to Plaintiffs’ counsel.

13. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** Defendants object to this interrogatory on the grounds that “partisanship scores or estimates” are vague. Without waiving this objection, see response to Interrogatory Nos. 10, 11, and 12.

14. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE:** In 2017, the legislature did not change districts in 2011 county groups that did not include a district declared illegal in the *Covington* case.

15. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the for the 2011 Unchanged Districts were prioritized or weighted in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE: See response to Interrogatory No. 14.**



16. Identify and describe all elections data and other measures of partisanship that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE: See response to Interrogatory No. 14.**

17. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2011 Unchanged Districts, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

**RESPONSE: See response to Interrogatory No. 14.**

18. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE:** Defendants object to this interrogatory on the grounds that “partisanship scores or estimates” are vague. Without waiving this objection, see response to Interrogatory No. 14.

Respectfully submitted this 4th day of January, 2019.

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

By:  \_\_\_\_\_  
Phillip J. Strach

N.C. State Bar No. 29456

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BAKER & HOSTETLER, LLP

By: \_\_\_\_\_

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Facsimile: (202) 861-1783

*Counsel for Legislative Defendants and the State of  
North Carolina*

*\*pro hac vice motion forthcoming*

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing in the above titled action upon all other parties to this cause by:

- ☐ Hand delivering a copy hereof to each said party or to the attorney thereof;
- ☐ Transmitting a copy hereof to each said party via facsimile transmittal;
- ☒ By email transmittal;
- ☒ Depositing a copy here of, first class postage pre-paid in the United States mail, properly addressed to:

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*Counsel for Common Cause and the  
Individual Plaintiffs*

This the 4th day of January, 2019.

By: \_\_\_\_\_

Phillip J. Strach

# **EXHIBIT D**





grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from: (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such and; (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Document Requests. These responses are subject to amendment and supplementation as Defendants acquire additional information and completes their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Document Requests were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Document Request should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Document Request or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Document Request is not intended to be, and shall not be, construed as a waiver by Defendants of any part of any objection to any Document Request.



Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 34 of the Federal Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules. Defendants further object that under the Federal Rules of Civil Procedure, these requests are premature, as no discovery may be conducted until completion of a Rule 26(f) conference.

Since the Federal Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

### **REQUESTS**

1. All documents and communications referring or relating to the 2017 Plans, including, but not limited to:
  - a. All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2017 Plans.

**RESPONSE:** Defendants object to this Document Request to the extent it requests documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Subject to and without waiving this objection, Defendants produce responsive documents bates labeled LDNC000001-LDNC001883.

- b. All documents referring or relating to the 2017 Plans Criteria.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Subject to and without waiving these objections, Defendants produce responsive documents bates labeled LDNC000001-LDNC001883.

- c. All documents referring or relating to how each 2017 Plans Criterion was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.

**RESPONSE: Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Subject to and without waiving these objections, Defendants produce responsive documents bates labeled LDNC000001-LDNC001878.**

- d. All documents referring or relating to how each 2017 Plans Criterion affected the 2017 Plans, including any rule or principle guiding the use of each criterion in developing the 2017 Plans, or any specific choices made in constructing a district based on each criterion.

**RESPONSE: Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Subject to and without waiving these objections, Defendants produce responsive documents bates labeled LDNC000001-LDNC001878.**

- e. All documents referring or relating to the prioritization or weighting of the 2017 Plans criteria in developing the 2017 Plans.

**RESPONSE: Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Subject to and without waiving these objections, Defendants produce documents bates labeled LDNC000001-LDNC001878.**

- f. All communications since January 1, 2015 with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2017 Plans.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Subject to and without waiving these objections, Defendants are not aware of any responsive documents.

- g. All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2017 Plans.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Subject to and without waiving these objections, Defendants produce communications with Dr. Tom Hofeller bates labeled LDNC001879-LDNC001883.



- h. All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2017 Plans.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Subject to and without waiving these objections, Defendants produce responsive documents bates labeled LDNC000001-LDNC001883.



2. All documents and communications since November 1, 2010 referring or relating to the 2011 Unchanged Districts, including, but not limited to:
  - a. All documents, proposals, analyses, memoranda, notes, and calendar entries in whatever medium (*e.g.*, paper, computerized format, e-mail, photograph, audiotape) they are maintained referring or relating to the 2011 Unchanged Districts.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further state that other than documents already produced to Plaintiffs' counsel in the *Dickson* or *Covington* cases, they are unaware of any responsive documents.

- a. (sic) All documents referring or relating to the criteria considered or using in creating the 2011 Unchanged Districts.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further state that other than documents already produced to Plaintiffs' counsel in the *Dickson* or *Covington* cases, they are unaware of any responsive documents.

- b. All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts was measured, including the specific data, information, formulas, scores, or estimates used in assessing or promoting compactness, partisanship (of precincts, voting districts, and/or proposed House and Senate districts), the protection of incumbents, and avoiding the splitting of counties, municipalities, and precincts.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further state that other than documents already produced to Plaintiffs' counsel in the *Dickson* or *Covington* cases, they are unaware of any responsive documents.

- c. All documents referring or relating to how each of the criteria considered or used in creating the 2011 Unchanged Districts affected the 2011 Unchanged Districts, including any rule or principle guiding the use of each criterion in developing the 2011 Unchanged Districts, or any specific choices made in constructing a district based on each criterion.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further state that other than documents already produced to Plaintiffs' counsel in the *Dickson* or *Covington* cases, they are unaware of any responsive documents.

- d. All documents referring or relating to the prioritization or weighting of each of the criteria considered or used in creating the 2011 Unchanged Districts.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further state that other than documents already produced to Plaintiffs' counsel in the *Dickson* or *Covington* cases, they are unaware of any responsive documents.

- e. All communications with any affiliate of the Republican Party, including, but not limited to, the Republican Party of North Carolina, the Republican National Committee (RNC), the National Republican Congressional Committee (NRCC), the Republican State Leadership Committee (RSLC), the REDistricting Majority Project (REDMAP), or the State Government Leadership Foundation (SGLF) that refer or relate to the 2011 Unchanged Districts.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further state that other than documents already produced to Plaintiffs' counsel in the *Dickson* or *Covington* cases, they are unaware of any responsive documents.

- f. All communications with any mapmakers, consultants, advisors, experts, statisticians, mathematicians, or political scientists referring or relating to the 2011 Unchanged Districts.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further state that other than documents already produced to Plaintiffs' counsel in the *Dickson* or *Covington* cases, they are unaware of any responsive documents.



- g. All non-privileged communications with any committees, legislators, or legislative staffers referring or relating to the 2011 Unchanged Districts.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further state that other than documents already produced to Plaintiffs' counsel in the *Dickson* or *Covington* cases, they are unaware of any responsive documents.



3. All documents and communications since January 1, 2015 not encompassed within Requests 1 or 2 that refer or relate to the development of new state legislative districts for the North Carolina House of Representatives and the North Carolina Senate.


**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Defendants further object to the extent this request is redundant of Request for Production 1a, 1b, 1c, 1d, and 1e. Subject to and without waiving these objections, Defendants refer Plaintiffs to Defendants responses to Request for Production 1a, 1b, 1c, 1d, and 1e.

4. All non-privileged documents and communications since January 1, 2015 not encompassed within Requests 1, 2, or 3 that refer or relate to the litigation surrounding, or the legal status of, the 2011 Plans.

**RESPONSE:** Defendants object to this Document Request to the extent it includes documents protected by the attorney-client privilege, work product doctrine, or legislative privilege. Defendants also object on the grounds that this request is vague and overbroad. Without waiving these objections, Defendants further state that at this time they are not aware of any responsive documents.

Respectfully submitted this 4th day of January, 2019.

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

By:   
Phillip J. Strach

N.C. State Bar No. 29456

Michael McKnight

N.C. State Bar No. 36932

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*Counsel for Legislative Defendants and the State of  
North Carolina*

*\*pro hac vice motion forthcoming*

### CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing in the above titled action upon all other parties to this cause by:

- ☐ Hand delivering a copy hereof to each said party or to the attorney thereof;
- ☐ Transmitting a copy hereof to each said party via facsimile transmittal;
- ☒ By email transmittal;
- ☒ Depositing a copy here of, first class postage pre-paid in the United States mail, properly addressed to:

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Caroline P. Mackie  
P.O. Box 1801  
Raleigh, NC 27602-1801  
(919) 783-6400  
[espeas@poynerspruill.com](mailto:espeas@poynerspruill.com)

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*Counsel for Common Cause and the  
Individual Plaintiffs*

This the 4th day of January, 2019.

By: 

Phillip J. Strach

36902297.1

# **EXHIBIT E**

January 15, 2019

**VIA E-MAIL**

Phillip J. Strach  
4208 Six Forks Road  
Suite 1100  
Raleigh, NC 27609

Re: *Common Cause v. Lewis*, 18CV14001 (N.C. Super.)

Dear Mr. Strach,

I write regarding deficiencies in Legislative Defendants' January 4, 2019 Responses to Plaintiffs' First Set of Interrogatories and Plaintiffs' First Set of Requests for Production of Documents. Please cure these deficiencies no later than January 22, 2019. If Legislative Defendants are unwilling to supplement their responses to provide the requested information and otherwise to cure the deficiencies, Plaintiffs request to meet and confer no later than January 22, 2019. Please provide times on or before that date when you are available to meet and confer regarding these issues.

**I. General Deficiencies**

Legislative Defendants' Responses to both the First Set of Interrogatories and the First Set of Requests for Production of Documents are deficient in the following respects:

First, Legislative Defendants' responses assert that they are provided pursuant to the Federal Rules of Civil Procedure. However, Legislative Defendants provided these responses at 5:18 p.m. on January 4, 2019—after the federal court had already mailed a certified copy of its remand order to the state court. Jurisdiction thus had already reverted to the state court, 28 U.S.C. § 1447(c), and your responses must be provided under the North Carolina Rules of Civil Procedures, not the Federal Rules. Please revise your responses to be pursuant to, and consistent with, the North Carolina Rules.

Second, Legislative Defendants purport to respond on behalf of the State of North Carolina. The Attorney General, not private counsel for Legislative Defendants, represents the State of North Carolina in this action, and accordingly Legislative

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Defendants' responses on behalf of the State are invalid. Please revise your responses to remove the erroneous assertion that the responses are provided on behalf of the State.

Third, Legislative Defendants assert that certain of Plaintiffs' requests seek information or materials covered by the attorney-client privilege, legislative privilege, or the work product doctrine. North Carolina Rule of Civil Procedure 26(b)(5) requires that, when withholding otherwise discoverable information based on such a claim, "the party must (i) expressly make the claim and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed, and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." Your responses do not comply with this Rule, as you did not include a privilege log to describe the information and documents being withheld on the basis of privilege or the work product doctrine. Please supplement your responses to provide such a privilege log. Note that, pursuant to N.C. Gen. Stat. § 120-133 and Dr. Hofeller's contract with the General Assembly, all drafting and information requests to Dr. Hofeller and legislative employees, and documents prepared by Dr. Hofeller and legislative employees, are "no longer confidential and [are] public records."

## **II. Deficiencies in Responses to Individual Interrogatories**

**INTERROGATORY #1:** This Interrogatory asks Legislative Defendants to identify each person who had any involvement in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria to be used in drawing or revising district boundaries for the 2017 Plans. Your response identifies Dr. Thomas Hofeller, Representative Lewis, Senator Hise, and five other Members of the General Assembly. This response is deficient insofar as it does not identify other persons who had "any involvement" in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria to be used in doing so. For instance:

- In response to Interrogatory #3, you assert that "legal counsel" were consulted regarding the 2017 Plans, but your response to Interrogatory #1 does not identify this legal counsel. Please identify all attorneys who had "any involvement" in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria to be used in doing so.
- Your response does not identify any General Assembly staff, even though the legislative record makes clear that staff members were involved in the 2017 redistricting process. Please identify all staff members who had "any involvement" in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria to be used in doing so.



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- Your response does not name Representative Moore or Senator Berger, even though the record makes clear that they were involved in the 2017 redistricting process, including but not limited to having authorized the hiring of Dr. Hofeller. Please identify their involvement in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria to be used in doing so.

Please identify these and all other responsive persons or entities. Note that persons who had “any involvement” is not limited to persons who had decisionmaking authority or ultimate responsibility for drawing, revising, or developing criteria for the 2017 Plans.

**INTERROGATORY #2:** This Interrogatory asks for information regarding the involvement of each person identified in response to Interrogatory #1. Your response to Interrogatory #2 is deficient insofar as the response to Interrogatory #1 fails to identify relevant persons. Please provide information responsive to Interrogatory #2 for such persons. Moreover, even for those persons identified in your response to Interrogatory #1, your response to Interrogatory #2 is deficient:

- Your response asserts, without elaboration, that Representative Lewis and Senator Hise provided “direction” to Dr. Hofeller. This is insufficient. Please describe in detail any and all “direction” that Representative Lewis and/or Senator Hise provided to Dr. Hofeller, including, without limitation, whether Representative Lewis and Senator Hise instructed Dr. Hofeller on the weighting, prioritization, and/or application of the criteria to be used in drawing the 2017 Plans, and whether Representative Lewis and Senator Hise provided input on specific district boundaries or on divisions of specific municipalities, voting districts, or precincts under the 2017 Plans.
- Your response asserts, without elaboration, that Representative Dollar “had input revising the 2017 House Plan.” This is insufficient. Please describe in detail the specific “input” that Representative Dollar provided, including the nature, setting, and timing of the input, the districts that were the subject of that input, and to whom Representative Dollar provided the input.
- Your response asserts, without elaboration, that “Senators Bishop, Meredith, Wade, and Alexander were consulted on some revisions to the 2017 Senate Plans.” This is insufficient. Please describe in detail the specific revisions

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about which these Members were consulted, the nature, setting, and timing of the consultation, and the person(s) who consulted with these Members.

**INTERROGATORY #3:** This Interrogatory asks for the name of any entity with which each person identified in response to Interrogatories #1 and #2 were affiliated at the time of the 2017 redistricting. Your response provides no information but instead objects on the ground that the request is “unduly vague and overbroad since the persons in question may have been affiliated with various entities that had nothing to do with redistricting.” Your response to Interrogatory #3 is deficient insofar as the responses to Interrogatories #1 and #2 fail to identify relevant persons. Please provide information responsive to Interrogatory #3 for such persons. Moreover, even for those persons identified in your response to Interrogatory #1, your response to Interrogatory #3 is deficient:

- The professional affiliations of the persons involved in the 2017 redistricting is relevant regardless of whether the affiliated entities perform work on redistricting specifically.
- Please provide Dr. Hofeller’s professional affiliations at the time of his work on the 2017 Plans.
- Please identify the professional affiliations of the Members of the General Assembly identified in your response to Interrogatory #1, including, without limitation, local or national political organizations or groups.

**INTERROGATORY #4:** This Interrogatory asks Legislative Defendants to identify the name of the entity or entities that paid the fees or expenses of each person identified in response to Interrogatories #1 and #2. Your response to Interrogatory #4 is deficient insofar as the responses to Interrogatories #1 and #2 fail to identify relevant persons. Please provide information responsive to Interrogatory #4 for such persons.

**INTERROGATORY #5:** This Interrogatory asks Legislative Defendants to identify each person or entity with whom they communicated, or caused to be communicated with, before August 10, 2017 regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans. Your response states that Representative Lewis and Senator Hise consulted “with legal counsel during the 2017 redistricting” and “likely consulted with members of the General Assembly and the public.” This response is deficient:

- The response provides information only as to Representative Lewis and Senator Hise, but the Interrogatory was directed to all Legislative Defendants,

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including Representative Moore and Senator Berger. Please provide responses as to Representative Moore and Senator Berger.

- The Interrogatory requests information regarding communications before August 10, 2017, not “during the 2017 redistricting process” generally. Please provide responses specific to communications before August 10, 2017.
- The response fails to list each “legal counsel” and “member[] of the General Assembly and the public” with whom responsive communications occurred before August 10, 2017. Please separately name each attorney, member of the General Assembly, and member of the public involved in responsive communications before August 10, 2017.

**INTERROGATORY #6:** This Interrogatory asks Legislative Defendants to identify each person or entity who maintained, received, or viewed a draft or copies or all or part of the 2017 Plans before August 10, 2017. Your response asserts that, “[t]o the best recollection of [Legislative] Defendants, no drafts of the 2017 plans existed prior to August 10, 2017.” Please note that this Interrogatory requests information about drafts of “all or part of the 2017 Plans,” which encompasses drafts of individual county clusters, individual districts, portions of individual districts, or any other “part” of either 2017 Plan. Also note that Dr. Hofeller was purportedly retained to redraw the legislative districts on June 27, 2017. Please confirm that neither Dr. Hofeller nor anybody else possessed drafts of all or part of either 2017 Plan before August 10, 2017.

**INTERROGATORY #7:** This Interrogatory asks Legislative Defendants to identify each person or entity with whom they communicated, or caused to be communicated with, between August 10, 2017 and August 21, 2017 regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans. Your response merely cross-references your response to Interrogatory #5 and is deficient:

- The response provides information only as to Representative Lewis and Senator Hise, but the Interrogatory was directed to all Legislative Defendants, including Representative Moore and Senator Berger. Please provide responses as to Representative Moore and Senator Berger.
- The Interrogatory requests information regarding communications between August 10, 2017 and August 17, 2017, not “during the 2017 redistricting process” generally. Please provide responses specific to communications between August 10, 2017 and August 17, 2017.

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- The response fails to list each “legal counsel” and “member[] of the General Assembly and the public” with whom responsive communications occurred between August 10, 2017 and August 17, 2017. Please separately name each attorney, member of the General Assembly, and member of the public involved in responsive communications between August 10 and 17, 2017.

**INTERROGATORY #8:** This Interrogatory asks Legislative Defendants to identify each person or entity that maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10, 2017 and August 21, 2017. Your response asserts that, “[t]o the best recollection of [Legislative Defendants], it is likely that Representative Lewis, Representative Dollar, and Senator Hise viewed all or part of the 2017 plans between August 10, 2017 and August 21, 2017.” Your response is deficient:

- Your response does not identify any General Assembly staff who maintained, received, or viewed a draft or copy of all or part of the 2017 Plans during this time period. Please confirm whether any General Assembly staff maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10 and 21, 2017. If so, please identify the staff member(s).
- Your response does not identify any “legal counsel” who maintained, received, or viewed a draft or copy of all or part of the 2017 Plans during this time period. Please confirm whether any “legal counsel” maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10 and 21, 2017. If so, please identify the lawyer(s).

Please again note that this Interrogatory requests information about drafts of “all or part of the 2017 Plans,” which encompasses drafts of individual county clusters, individual districts, portions of individual districts, or any other “part” of either 2017 Plan.

**INTERROGATORY #9:** This Interrogatory asks Legislative Defendants to identify and describe all computers, software, programs, applications, and statistical packages used in developing the 2017 Plans. Your response asserts that, “[t]o the knowledge of [Legislative Defendants]” the 2017 Plans were drawn on a computer owned by the General Assembly, that Dr. Hofeller used Maptitude software, and that a license to Maptitude was also purchased by the General Assembly. Your response is deficient:

- Please identify with more specificity the computer that was used to draw the 2017 Plans, include the type and model of computer and its current location.

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- Other than Maptitude, your response does not identify any software, programs, applications, or statistical packages used in developing the 2017 Plans. Please identify and describe all such programs, applications, or statistical packages, including any used to process or analyze elections data and/or to calculate partisanship measures.

**INTERROGATORY #11:** This Interrogatory asks Legislative Defendants to identify and describe how all criteria considered or used in drawing or revising district boundaries for the 2017 Plans were prioritized or weighted. Your response asserts that “[a]ll constitutionally required criteria had priority over all other criteria including equal population between districts, the *Stephenson* county grouping formula, and the requirement of contiguity.” Your response is deficient:

- Your response fails to identify and describe the prioritization or weighting among the three criteria of elections data, avoiding municipality splits, and avoiding precinct splits. Please provide information regarding the prioritizing or weighting of these three criteria, including but not limited to whether elections data and/or any measure of partisanship were provided higher prioritization or weighting than avoiding municipality and/or precinct splits.
- Please clarify the meaning of “the *Stephenson* county grouping formula” as used in your answer. In particular, please clarify whether this phrase refers only to the decision of what counties to group together, or whether it also encompasses the division or assignment of counties *within* a county grouping.

**INTERROGATORY #12:** This Interrogatory asks Legislative Defendants to identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts. Your response objects that the words “formulas and algorithms” are vague, and that Legislative Defendants “are not aware of any ‘formulas or algorithms’ used to draw the plans.” Your response is deficient:

- Your response entirely ignores the first clause of the Interrogatory, which seeks information regarding “how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans.” Please provide this information. While your response mentions certain reports that were prepared and publicly disclosed “[a]fter the plans

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were developed,” this Interrogatory seeks information regarding how elections data and measures of partisanship were used by mapmakers—including but not limited to Dr. Hofeller, Representative Lewis, and Senator Hise—at the time of drawing or revising district boundaries for the 2017 Plans.

- With respect to formulas and algorithms, the Interrogatory did not ask how formulas or algorithms were “used to draw the plans.” It asked for information about any formulas or algorithms that were “used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.” For instance, any formulas or algorithms that were used to weight or average the different election results that Dr. Hofeller considered would be responsive to this request. As you know, Dr. Hofeller employed such a formula in developing North Carolina’s congressional plan in 2016.

**INTERROGATORY #13:** This Interrogatory asks Legislative Defendants to identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2017 Plans. Your response objects on the grounds that the words “partisanship scores or estimates” are vague and cross-references your responses to Interrogatories #10, 11, and 12, without providing any substantive response. This response is deficient. The Interrogatory covers any number assigned to a precinct or voting district as a measure or proxy of that precinct’s or voting district’s partisan voting history, partisan leanings, partisan preferences, and/or expected partisan vote share for state House or state Senate elections.

**INTERROGATORY #14-18:** These Interrogatories seek information regarding the “2011 Unchanged Districts,” which are defined as “the state legislative districts enacted by the General Assembly under the 2011 Plans that were not altered under the 2017 Plans, including all drafts thereof.” Your response to Interrogatory #14 asserts that, “[i]n 2017, the legislature did not change districts in 2011 county groups that did not include a district declared illegal in the *Covington* case,” and your responses to Interrogatories #15-18 merely cross-reference your response to Interrogatory #14. These responses are deficient. These Interrogatories did not limit the period of the requests to what occurred “in 2017.” The requests encompass the drawing or revising of the 2011 Unchanged Districts at any time, including in 2011 when the districts were originally created. Please provide information responsive to these requests.

### **III. Deficiencies in Responses to Requests for Production of Documents**

**RFP #1a-1h:** These requests seek documents, communications, and other materials related to the 2017 Plans, the 2017 Plans criteria, and communications with certain

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persons and entities. Your production consists almost exclusively of public hearing transcripts and public filings in the *Covington* case. Your production is deficient:

- Unless Legislative Defendants did not have a single private meeting, exchange a single communication, or generate a single non-public document outside of the few produced, there are necessarily additional responsive documents, e-mails, calendar entries, and other materials that relate to the 2017 Plans or the 2017 Plans criteria but are not included in your production.
- Plaintiffs' Requests for Production of Documents covered all of Legislative Defendants' "predecessors in office, attorneys, representatives, agents, and others acting on their behalf." You therefore must produce responsive materials associated with such persons, including but not limited to Dr. Hofeller and General Assembly staff members.
- Please confirm that you have searched relevant e-mail accounts (official or personal), text messages, encrypted messaging applications, hard copy files, and all other electronic and non-electronics mediums for responsive materials.

**RFP #3:** This request seeks all documents and communications since January 1, 2015 not encompassed within RFPs #1 or #2 that refer or relate to the development of new state legislative districts for the North Carolina House and Senate. Your production consists almost exclusively of public hearing transcripts and public filings with the *Covington* court. Your production is deficient:

- Unless Legislative Defendants did not have a single private meeting, exchange a single communication, or generate a single non-public document since January 1, 2015 relating to the development of new state legislative districts (outside of the few produced), there are necessarily additional responsive documents that are not included in your production.
- Plaintiffs' Requests for Production of Documents covered all of Legislative Defendants' "predecessors in office, attorneys, representatives, agents, and others acting on their behalf." You therefore must produce responsive materials associated with such persons, including but not limited to Dr. Hofeller, and General Assembly staff members.



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- Please confirm that you have searched relevant e-mail accounts (official or personal), text messages, encrypted messaging applications, hard copy files, and all other electronic and non-electronics mediums for responsive materials.

**RFP #4:** This request seeks all non-privileged documents and communications since January 1, 2015 not encompassed within RFPs #1, #2, or #3 that refer or relate to the litigation surrounding, or the legal status of, the 2011 Plans. Your production consists almost exclusively of public hearing transcripts and public filings with the *Covington* court. Your production is deficient:

- Unless Legislative Defendants did not have a single private meeting, exchange a single communication, or generate a single non-public document since January 1, 2015 relating to the litigation surrounding, or the legal status of the 2011 Plans, there are necessarily additional responsive documents that are not included in your production.
- Plaintiffs' Requests for Production of Documents covered all of Legislative Defendants' "predecessors in office, attorneys, representatives, agents, and others acting on their behalf." You therefore must produce responsive materials associated with such persons, including but not limited to Dr. Hofeller, General Assembly staff members, and your legal counsel. In the interest of efficiency and reducing the burden in responding to this request, Plaintiff will exempt from this request any responsive materials from counsel of record in the *Covington* or *Dickson* cases that relate exclusively to the prosecution of those cases. Thus, Legislative Defendants need not produce such materials or list them on their privilege log.
- Please confirm that you have searched relevant e-mail accounts (official or personal), text messages, encrypted messaging applications, hard copy files, and all other electronic and non-electronics mediums for responsive materials.

Sincerely,

/s/ R. Stanton Jones

R. Stanton Jones

/s/ Edwin M. Speas, Jr.

Edwin M. Speas, Jr.



# **EXHIBIT F**



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

*Attorneys at Law*

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January 22, 2019

**Via Email**

R. Stanton Jones  
Arnold & Porter  
601 Massachusetts Ave., NW  
Washington, DC 20001  
Stanton.jones@arnoldporter.com

RE: Common Cause v. Lewis  
State of N.C. and Legislative Defendants' Responses to Plaintiffs First Set of Discovery

Dear Mr. Jones:

We are in receipt of your letter dated January 15, 2019 regarding our January 4, 2019 responses to Plaintiffs First Set of Interrogatories and Requests for Production of Documents. We write today to address the issues contained in your letter.

**I. General Deficiencies**

You contend that the responses submitted by the State of North Carolina and the Legislative Defendants (hereinafter "Defendants") in this matter are generally deficient in three ways.

First, you contend that the responses are deficient because they are provided pursuant to the Federal Rules of Civil Procedure. In support of this contention you state that at the time we served you with responses the court had already mailed a certified copy of its remand order to the court. However, as you know, our position is that the remand was automatically stayed and the federal court did not rule on that issue until January 17, 2019, well after service of the discovery responses. In any event, we will re-issue the responses under the state court caption.

Second, you contend that we do not represent the State of North Carolina in this action. As stated in our notice of removal and answer, pursuant to N.C. Gen. Stat § 1-72.2, the legislative branch of North Carolina state government is considered the "State of North Carolina" in actions challenging statutes enacted by the North Carolina General Assembly along with the executive branch of state government.

Third, you contend that we did not produce a privilege log as required under North Carolina Rule of Civil Procedure 26(b)(5). We will provide you with a privilege log of any documents that were withheld due to privilege, should any exist, under the applicable rules.

## **II. Alleged Deficiencies in Responses to Individual Interrogatories**

**Interrogatory #1.** Your letter alleges that Defendants response to Interrogatory 1 is deficient because Defendants did not identify every person who had “any involvement” with the “redistricting process.” However, Defendants were not required to do so, as the Interrogatory called for, for the identification of each person who had involvement in drawing, or revising the 2017 Plans or developing the criteria for the drawing of the 2017 Plans. Specifically you complain that Defendants did not identify any General Assembly staff or legal counsel who were “involved.” However, none of the members of the General Assembly staff nor legal counsel were “involved” in drawing or revising the 2017 plans or criteria which is what the interrogatory asks. You also allege that we failed to provide responses for Defendants Moore or Berger. However, we answered the interrogatory correctly as it was phrased. If you are unhappy with the way you asked the interrogatory, feel free to serve a new one.

**Interrogatory #2.** This Interrogatory asks for a description of each person’s involvement identified in Interrogatory #1. Defendants descriptions that Representative Dollar had “input” and that Senators Bishop, Meredith, Wade and Alexander were “consulted” accurately describe their involvement in the drawing or revising of district boundaries for the 2017 plan, and as such the response is not deficient. Further, the third parties named in the interrogatory are in the best position to “describe” their involvement. You also assert that we did not respond adequately to the “direction” given to Dr. Hofeller. We disagree. Defendants turned over their communications with Dr. Hofeller regarding the need for new plans in 2017 and provided him with the necessary criteria. This constitutes the “direction” given to Dr. Hofeller.

**Interrogatory #3.** This Interrogatory asks that Defendants list any entity each person listed in Interrogatories 1 and 2 are “affiliated” with. Plaintiffs Interrogatories failed to define “affiliated.” Your letter asks for the “professional affiliations” of each of those individuals. However, you also failed to provide a definition for “professional affiliations” which is just as vague as “affiliations.” Should Plaintiffs provide a definition for “professional affiliations” and if said definition is tailored to redistricting, Defendants will consider supplementing their responses.

**Interrogatory #4.** You contend that Defendants’ response to Interrogatory #4 is deficient based on responses to Interrogatories 1 and 2. We disagree that these responses are deficient and refer you to our responses in our discussion of Interrogatories 1 and 2 above.

**Interrogatory #5.** This Interrogatory asks that Defendants identify “each” person or entity Defendants communicated with prior to August 10, 2017 regarding the drawing, revising of, or drafting of criteria to be used in drawing the 2017 plans. You allege that our response is deficient in that Defendants did not list every member of the public who may have contacted Defendants regarding the 2017 plans. It is simply not feasible for Defendants to remember each and every member of the public who called or mentioned the drawing or revising of the 2017 plans prior to August 10, 2017. As indicated in Defendants response, Senator Hise and Representative Lewis consulted with legal counsel. Defendants are not aware of any communications responsive to this request for Defendants Moore and Berger.



**Interrogatory #6.** Your letter asks us to confirm that neither Dr. Hofeller nor anybody else possessed drafts of all or part of either 2017 Plan before August 10, 2017. While Defendants are not in a position to speak for Dr. Hofeller, Defendants to the best of their recollection, maintain that no drafts of the 2017 plans existed prior to August 10, 2017.

**Interrogatory #7.** This Interrogatory asks Defendants to identify each person or entity they communicated with between August 10, 2017 and August 21, 2017. Your letter asks about a time frame between August 10, 2017 and August 17, 2017. In light of this, Defendants seek clarity as to what you are asking in terms of supplementation to this response.

**Interrogatory #8.** This Interrogatory asks Defendants to identify each person or entity that maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10 and August 21, 2017. You complain that the response does not identify “staff” or legal counsel. While it is likely that Mark Coggins and Jim Blaine viewed some or all of the 2017 Plans between those dates, Defendants do not recall every staff member who may have done so. The identity of legal counsel providing advice to Defendants is privileged, and in any event completely irrelevant to any issue in this case. If you disagree, please provide authority for your position.

**Interrogatory #9.** This Interrogatory asks for Defendants to identify and describe any computers, software, programs, applications, and statistical packages used in developing the 2017 Plans. Your letter alleges that our response is deficient in that we did not describe the make and model of the computer, the location of the computer, and because the answer did not identify any software, programs, applications, or statistical packages other than Maptitude, to develop the 2017 Plans. At the outset, Defendants note that the Interrogatory did not request the location of the computer, but your letter does. Defendants state that the relevant hard drive is in the possession of the General Assembly and a forensic copy of its contents will be made and produced to Plaintiffs per Plaintiffs second set of Requests for Documents. To the best recollection of the Defendants no other software or programs other than Maptitude was used in the drawing of the 2017 Plans.

**Interrogatory # 11.** This Interrogatory asks Defendants to identify and describe how criteria used in the drawing and revisions of the 2017 plans were prioritized or weighted. Your letter asserts that Defendants response is deficient because Defendants did not identify and describe the prioritization or weighting among the three criteria of elections data, avoiding municipality splits, and avoiding precinct splits. Defendants’ response set out the extent to their knowledge that the criteria were used. Your letter also asks Defendants to clarify the meaning of “the *Stephenson* county grouping formula.” This is a legal question. For your reference, please consult the *Stephenson* case and its progeny, as well as *Dickson v. Rucho*. It is also the same formula used in plans by Plaintiffs in *Covington*.

**Interrogatory #12.** Your letter alleges that Defendants did not identify and describe how elections data and measures of partisanship were weighted or prioritized in the drawing or revising of district boundaries for the 2017 Plans. In response, Defendants refer you to our response to Interrogatory #11 above. Your letter also alleges that Defendants response is deficient because it does not disclose “formulas or algorithms” used to develop “partisanship scores or estimates for precincts or voting districts in North Carolina.” Defendants’ response is not deficient. Defendants stated in their response

that they were not aware of any formulas or algorithms used during the process of producing the 2017 Plans.

**Interrogatory #13.** This Interrogatory asks Defendants to identify and describe “partisanship scores or estimates” for precincts and voting districts that were considered during the drawing and revisions of the 2017 Plans. Defendants continue to object that “partisanship scores or estimates” is vague and undefined. Should Plaintiffs provide an adequate definition to assist in the interpretation of the Interrogatory, Defendants will consider supplementing their response.

**Interrogatories #14-18.** Your letter alleges Defendants answers to Interrogatories 14-18 are deficient as it pertains to the drawing and revisions of the 2011 Plan. The information sought in these requests is public record and already produced to Plaintiffs’ counsel in previous litigation.

**Alleged Deficiencies in Responses to Request for Production of Documents**

Your letter details the same or similar alleged deficiencies to responses to Requests 1a-1h, 3, and 4. You complain that no additional responsive documents, e-mails, calendar entries, and other materials since January 2015 were produced. Given the near constant state of litigation regarding both North Carolina’s Legislative and Congressional Redistricting, and the thousands of pages of documents produced to plaintiffs’ counsel as part of that litigation, your complaint does not seem credible. All responsive documents which exist have been produced. Of course, as always, we will continue to diligently search the records of those involved and supplement our responses should any new documents be found.

We trust that this resolves the issues outlined in your January 15, 2019 letter. We remain willing to meet and confer with you on these issues.

Sincerely,



Phillip J. Strach

PJS:amr

37077989.1

# **EXHIBIT G**

## Jacobson, Daniel

---

**From:** Jones, Stanton  
**Sent:** Friday, January 25, 2019 7:15 PM  
**To:** Strach, Phillip J.; Riggins, Alyssa; McKnight, Michael D.  
**Cc:** melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie  
**Subject:** RE: Common Cause, et al. v. Lewis  
**Attachments:** NC -- Plaintiffs Third Set of Rogs.pdf

Phil – Thanks for meeting and conferring with us earlier about Legislative Defendants’ discovery responses. As we agreed, attached are four new interrogatories addressing your concerns about the first four interrogatories in our first set. We look forward to receiving responses by February 1, as agreed.

In addition, below is a summary of points we discussed, and agreements we reached, with respect to other issues raised in our January 15 letter.

### General Deficiencies:

You agreed to re-serve discovery responses under the state court rules by January 28.

You stated that you do not believe any materials were withheld on the basis of privilege, including you do not believe there are any communications with counsel relating to the 2017 Plans that are responsive to Plaintiffs’ discovery requests. You agreed to let us know by February 1 whether that remains your position or whether you will produce a privilege log.

### Individual Interrogatories:

Interrogatories #1-4: Per above, we agreed to send new Interrogatories addressing Legislative Defendants’ objections, and you agreed to respond to those four new Interrogatories by February 1.

Interrogatory #5: We clarified that this Interrogatory seeks the names of, without limitation, legislative staff members, legal counsel, and anyone else Legislative Defendants remember communicating with about the 2017 redistricting before 8/10/17. You agreed to revisit the response to this Interrogatory and to supplement the response, if necessary, by February 1. Between now and February 1, you will, among other things, (1) investigate and identify additional individuals responsive to this Interrogatory; and (2) review the case law we identified holding that only the substance of the communications between attorneys and clients—not the identities of the attorneys and clients or the fact of the engagement—are privileged.

Interrogatory #7: We acknowledged that our January 15 letter had a typo and should have said 8/21/17 and not 8/17/17. We also explained that the same clarifications we provided for Interrogatory #5 applied for this Interrogatory. You agreed to revisit the response to this Interrogatory and to supplement the response, if necessary, by February 1.

Interrogatory #8: Legislative Defendants confirmed that Mark Coggins and Jim Blaine are the only two staff members that Legislative Defendants remember communicating with about the 2017 Plans between 8/10/17 and 8/21/17. You agreed to supplement the response to Interrogatory #8 by February 1 to list these two staff members as well as any legal counsel and other persons responsive to this request.

Interrogatory #9: You advised that Legislative Defendants will retain a local forensic consultant to receive the relevant hard drive and make two copies of its contents, one for you and the other for us. You also said that the hard drive has not been used since the creation of the 2017 Plans.

Interrogatory # 10: You stated that Legislative Defendants have no knowledge of the prioritization or weighting of the 2017 Plans Criteria other than the prioritization of equal population, contiguity, and the *Stephenson* county requirements. You stated that Legislative Defendant simply “gave him [i.e., Dr. Hofeller] the criteria and said draw the map.”

Interrogatory # 12: We confirmed that “formulas” as used in the Interrogatory carries its ordinary meaning and noted that the “Hofeller formula” was used refer to Dr. Hofeller’s weighting of election results in drawing the 2016 Congressional plans. You agreed to revisit the response to this Interrogatory and to supplement their response, if necessary, by February 1.

Interrogatory #13: We confirmed the meaning of “partisanship scores or estimates,” including by referring you to our January 15 letter. You agreed to revisit the response to this Interrogatory and to supplement their response, if necessary, by February 1.

Interrogatories #14-18: We explained that Legislative Defendants must answer these Interrogatories relating to the 2011 Unchanged Districts. You agreed to revisit the response to this Interrogatory and to supplement their response, if necessary, by February 8.

RFPs: You agreed to investigate and tell us by February 1 the process of searching for documents, including which custodians were searched. Depending on the results of this investigation, the parties may then confer regarding a supplemental production schedule. You will also confirm that text messages and all other methods of communications were searched.

---

**From:** Strach, Phillip J. [mailto:phil.strach@ogletree.com]  
**Sent:** Tuesday, January 22, 2019 10:00 PM  
**To:** Jones, Stanton; Riggins, Alyssa; McKnight, Michael D.  
**Cc:** melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie  
**Subject:** RE: Common Cause, et al. v. Lewis

Stanton:

I would be glad to meet and confer on these issues Friday at 1:00pm. Please let me know if that works for you.

Thanks.

Phil

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**  
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---

**From:** Jones, Stanton <Stanton.Jones@arnoldporter.com>  
**Sent:** Tuesday, January 22, 2019 6:41 PM  
**To:** Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>  
**Cc:** melias@perkinscoie.com; AKhanna@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>;



Speas, Edwin M. <ESpeas@poynerspruill.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Brennan, Stephanie <Sbrennan@ncdoj.gov>

**Subject:** RE: Common Cause, et al. v. Lewis

Phil, thank you for your letter below. Please let us know times you are available this Thursday or Friday (1/24 or 1/25) to meet and confer on these issues. Also please let us know when you will provide the privilege log referenced on page one of your letter.

Regards,  
Stanton

---

**From:** Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]

**Sent:** Tuesday, January 22, 2019 5:06 PM

**To:** Jones, Stanton; Riggins, Alyssa; McKnight, Michael D.

**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie

**Subject:** RE: Common Cause, et al. v. Lewis

Counsel, please see attached letter. Thanks. Phil

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

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---

**From:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>

**Sent:** Tuesday, January 15, 2019 1:21 PM

**To:** Strach, Phillip J. <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedeakins.com](mailto:Alyssa.Riggins@ogletreedeakins.com)>; McKnight, Michael D. <[Michael.McKnight@ogletreedeakins.com](mailto:Michael.McKnight@ogletreedeakins.com)>

**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com); Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>; Speas, Edwin M. <[ESpeas@poynerspruill.com](mailto:ESpeas@poynerspruill.com)>; Majmundar, Amar <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; Brennan, Stephanie <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>

**Subject:** RE: Common Cause, et al. v. Lewis

Counsel:

Please see the attached letter concerning Legislative Defendants' January 4 discovery responses.

Regards,  
Stanton

---

**From:** Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]

**Sent:** Friday, January 04, 2019 5:18 PM

**To:** Mackie, Caroline P.; Speas, Edwin M.

**Cc:** Jones, Stanton; [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); McKnight, Michael D.; Jacobson, Daniel; Theodore, Elisabeth; Majmundar, Amar; Brennan, Stephanie; Riggins, Alyssa

**Subject:** Common Cause, et al. v. Lewis

Counsel:

Please find attached discovery responses in this matter. Copies are being mailed out today as well.

The link to the document production is:

<https://ogletreedeakins.sharefile.com/d-s4f64e3d415f417cb>

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412

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# **EXHIBIT H**

## Jacobson, Daniel

---

**From:** Jones, Stanton  
**Sent:** Monday, February 11, 2019 6:56 PM  
**To:** Strach, Phillip J.; Riggins, Alyssa; McKnight, Michael D.  
**Cc:** melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie  
**Subject:** RE: Common Cause, et al. v. Lewis

Phil:  
In an effort to avoid unnecessary motions practice, and to avoid wasting the Court's time, please let me know if you can commit to provide, by close of business on Thursday, February 14, the interrogatory responses and other information that you agreed to provide, as outlined below in my email of January 25. If you cannot commit to that deadline, we will move to compel.

As for Rule 37(a)(2), the parties have already met and conferred on these discovery matters. If you believe that a further meet and confer would be productive, we would be happy to discuss these matters tomorrow afternoon after our conference about the proposed schedule.

Regards,  
Stanton

---

**From:** Strach, Phillip J. [mailto:phil.strach@ogletree.com]  
**Sent:** Friday, February 08, 2019 10:53 AM  
**To:** Jones, Stanton; Riggins, Alyssa; McKnight, Michael D.  
**Cc:** melias@perkinscoie.com; zzz.External.AKhanna@perkinscoie.com; Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie  
**Subject:** RE: Common Cause, et al. v. Lewis

We are moving as quickly as we can. Those dates were my goal and I have attempted to keep you apprised of the status. If you file a motion to compel, please be sure to review and comply with N.C. R. Civ. P. 37(a)(2).

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**  
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[phil.strach@ogletree.com](mailto:phil.strach@ogletree.com) | [www.ogletree.com](http://www.ogletree.com) | [Bio](#)

---

**From:** Jones, Stanton <Stanton.Jones@arnoldporter.com>  
**Sent:** Friday, February 08, 2019 10:44 AM  
**To:** Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>  
**Cc:** melias@perkinscoie.com; AKhanna@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; Speas, Edwin M. <ESpeas@poynerspruill.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Brennan, Stephanie <Sbrennan@ncdoj.gov>  
**Subject:** RE: Common Cause, et al. v. Lewis

It is not a matter of mere courtesy. As you know, we agreed to serve new discovery requests (rather than move to compel on the original requests) only on the condition that legislative defendants would provide responses by February 1. You also agreed to provide other supplemental information by February 1, as detailed below.

Please advise when you will provide all of the responses and other information described below. Given your failure to honor our agreement, we are prepared to move to compel early next week.

Stanton

---

**From:** Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]  
**Sent:** Friday, February 08, 2019 10:29 AM  
**To:** Jones, Stanton; Riggins, Alyssa; McKnight, Michael D.  
**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie  
**Subject:** RE: Common Cause, et al. v. Lewis

Stanton, we are working diligently on these issues and I will endeavor to give you a specific timeframe as soon as I am able. You will certainly receive responses within the times required by the rules but as a courtesy to you I am attempting to get responses sooner. Thanks. Phil

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**  
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412  
[phil.strach@ogletree.com](mailto:phil.strach@ogletree.com) | [www.ogletree.com](http://www.ogletree.com) | [Bio](#)

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**From:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>  
**Sent:** Friday, February 08, 2019 10:20 AM  
**To:** Strach, Phillip J. <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedeakins.com](mailto:Alyssa.Riggins@ogletreedeakins.com)>; McKnight, Michael D. <[Michael.McKnight@ogletreedeakins.com](mailto:Michael.McKnight@ogletreedeakins.com)>  
**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com); Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>; Speas, Edwin M. <[ESpeas@poynerspruill.com](mailto:ESpeas@poynerspruill.com)>; Majmundar, Amar <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; Brennan, Stephanie <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>  
**Subject:** RE: Common Cause, et al. v. Lewis

Phil – The discovery responses and other information you agreed to provide by February 1 is now a week overdue. Please confirm that you will provide all of it by the end of today, as you stated below.

Stanton

---

**From:** Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]  
**Sent:** Friday, February 01, 2019 4:27 PM  
**To:** Jones, Stanton; Riggins, Alyssa; McKnight, Michael D.  
**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie  
**Subject:** RE: Common Cause, et al. v. Lewis

Stanton:

We are working on these issues but won't be in a position to serve responses today. I anticipate being able to follow up on your requests no later than next week.

Thanks.

Phil

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412

[phil.strach@ogletree.com](mailto:phil.strach@ogletree.com) | [www.ogletree.com](http://www.ogletree.com) | [Bio](#)

---

**From:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>

**Sent:** Friday, January 25, 2019 7:15 PM

**To:** Strach, Phillip J. <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedeakins.com](mailto:Alyssa.Riggins@ogletreedeakins.com)>; McKnight, Michael D. <[Michael.McKnight@ogletreedeakins.com](mailto:Michael.McKnight@ogletreedeakins.com)>

**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com); Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>; Speas, Edwin M. <[ESpeas@poynerspruill.com](mailto:ESpeas@poynerspruill.com)>; Majmundar, Amar <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; Brennan, Stephanie <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>

**Subject:** RE: Common Cause, et al. v. Lewis

Phil – Thanks for meeting and conferring with us earlier about Legislative Defendants’ discovery responses. As we agreed, attached are four new interrogatories addressing your concerns about the first four interrogatories in our first set. We look forward to receiving responses by February 1, as agreed.

In addition, below is a summary of points we discussed, and agreements we reached, with respect to other issues raised in our January 15 letter.

General Deficiencies:

You agreed to re-serve discovery responses under the state court rules by January 28.

You stated that you do not believe any materials were withheld on the basis of privilege, including you do not believe there are any communications with counsel relating to the 2017 Plans that are responsive to Plaintiffs’ discovery requests. You agreed to let us know by February 1 whether that remains your position or whether you will produce a privilege log.

Individual Interrogatories:

Interrogatories #1-4: Per above, we agreed to send new Interrogatories addressing Legislative Defendants’ objections, and you agreed to respond to those four new Interrogatories by February 1.

Interrogatory #5: We clarified that this Interrogatory seeks the names of, without limitation, legislative staff members, legal counsel, and anyone else Legislative Defendants remember communicating with about the 2017 redistricting before 8/10/17. You agreed to revisit the response to this Interrogatory and to supplement the response, if necessary, by February 1. Between now and February 1, you will, among other things, (1) investigate and identify additional individuals responsive to this Interrogatory; and (2) review the case law we identified holding that only the substance of the communications between attorneys and clients—not the identities of the attorneys and clients or the fact of the engagement—are privileged.

Interrogatory #7: We acknowledged that our January 15 letter had a typo and should have said 8/21/17 and not 8/17/17. We also explained that the same clarifications we provided for Interrogatory #5 applied for this Interrogatory. You agreed to revisit the response to this Interrogatory and to supplement the response, if necessary, by February 1.

Interrogatory #8: Legislative Defendants confirmed that Mark Coggins and Jim Blaine are the only two staff members that Legislative Defendants remember communicating with about the 2017 Plans between 8/10/17 and 8/21/17. You agreed to supplement the response to Interrogatory #8 by February 1 to list these two staff members as well as any legal counsel and other persons responsive to this request.

Interrogatory #9: You advised that Legislative Defendants will retain a local forensic consultant to receive the relevant hard drive and make two copies of its contents, one for you and the other for us. You also said that the hard drive has not been used since the creation of the 2017 Plans.

Interrogatory # 10: You stated that Legislative Defendants have no knowledge of the prioritization or weighting of the 2017 Plans Criteria other than the prioritization of equal population, contiguity, and the *Stephenson* county requirements. You stated that Legislative Defendant simply “gave him [i.e., Dr. Hofeller] the criteria and said draw the map.”

Interrogatory # 12: We confirmed that “formulas” as used in the Interrogatory carries its ordinary meaning and noted that the “Hofeller formula” was used refer to Dr. Hofeller’s weighting of election results in drawing the 2016 Congressional plans. You agreed to revisit the response to this Interrogatory and to supplement their response, if necessary, by February 1.

Interrogatory #13: We confirmed the meaning of “partisanship scores or estimates,” including by referring you to our January 15 letter. You agreed to revisit the response to this Interrogatory and to supplement their response, if necessary, by February 1.

Interrogatories #14-18: We explained that Legislative Defendants must answer these Interrogatories relating to the 2011 Unchanged Districts. You agreed to revisit the response to this Interrogatory and to supplement their response, if necessary, by February 8.

RFPs: You agreed to investigate and tell us by February 1 the process of searching for documents, including which custodians were searched. Depending on the results of this investigation, the parties may then confer regarding a supplemental production schedule. You will also confirm that text messages and all other methods of communications were searched.

---

**From:** Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]

**Sent:** Tuesday, January 22, 2019 10:00 PM

**To:** Jones, Stanton; Riggins, Alyssa; McKnight, Michael D.

**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie

**Subject:** RE: Common Cause, et al. v. Lewis

Stanton:

I would be glad to meet and confer on these issues Friday at 1:00pm. Please let me know if that works for you.

Thanks.

Phil

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412

[phil.strach@ogletree.com](mailto:phil.strach@ogletree.com) | [www.ogletree.com](http://www.ogletree.com) | [Bio](#)

---

**From:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>  
**Sent:** Tuesday, January 22, 2019 6:41 PM  
**To:** Strach, Phillip J. <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedeakins.com](mailto:Alyssa.Riggins@ogletreedeakins.com)>; McKnight, Michael D. <[Michael.McKnight@ogletreedeakins.com](mailto:Michael.McKnight@ogletreedeakins.com)>  
**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com); Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>; Speas, Edwin M. <[ESpeas@poynerspruill.com](mailto:ESpeas@poynerspruill.com)>; Majmundar, Amar <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; Brennan, Stephanie <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>  
**Subject:** RE: Common Cause, et al. v. Lewis

Phil, thank you for your letter below. Please let us know times you are available this Thursday or Friday (1/24 or 1/25) to meet and confer on these issues. Also please let us know when you will provide the privilege log referenced on page one of your letter.

Regards,  
Stanton

---

**From:** Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]  
**Sent:** Tuesday, January 22, 2019 5:06 PM  
**To:** Jones, Stanton; Riggins, Alyssa; McKnight, Michael D.  
**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); Jacobson, Daniel; Theodore, Elisabeth; Mackie, Caroline P.; Speas, Edwin M.; Majmundar, Amar; Brennan, Stephanie  
**Subject:** RE: Common Cause, et al. v. Lewis

Counsel, please see attached letter. Thanks. Phil

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**  
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412  
[phil.strach@ogletree.com](mailto:phil.strach@ogletree.com) | [www.ogletree.com](http://www.ogletree.com) | [Bio](#)

---

**From:** Jones, Stanton <[Stanton.Jones@arnoldporter.com](mailto:Stanton.Jones@arnoldporter.com)>  
**Sent:** Tuesday, January 15, 2019 1:21 PM  
**To:** Strach, Phillip J. <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; Riggins, Alyssa <[Alyssa.Riggins@ogletreedeakins.com](mailto:Alyssa.Riggins@ogletreedeakins.com)>; McKnight, Michael D. <[Michael.McKnight@ogletreedeakins.com](mailto:Michael.McKnight@ogletreedeakins.com)>  
**Cc:** [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [AKhanna@perkinscoie.com](mailto:AKhanna@perkinscoie.com); Jacobson, Daniel <[Daniel.Jacobson@arnoldporter.com](mailto:Daniel.Jacobson@arnoldporter.com)>; Theodore, Elisabeth <[Elisabeth.Theodore@arnoldporter.com](mailto:Elisabeth.Theodore@arnoldporter.com)>; Mackie, Caroline P. <[CMackie@poynerspruill.com](mailto:CMackie@poynerspruill.com)>; Speas, Edwin M. <[ESpeas@poynerspruill.com](mailto:ESpeas@poynerspruill.com)>; Majmundar, Amar <[amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)>; Brennan, Stephanie <[Sbrennan@ncdoj.gov](mailto:Sbrennan@ncdoj.gov)>  
**Subject:** RE: Common Cause, et al. v. Lewis

Counsel:

Please see the attached letter concerning Legislative Defendants' January 4 discovery responses.

Regards,  
Stanton

---

**From:** Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]  
**Sent:** Friday, January 04, 2019 5:18 PM  
**To:** Mackie, Caroline P.; Speas, Edwin M.



**Cc:** Jones, Stanton; [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [zzz.External.AKhanna@perkinscoie.com](mailto:zzz.External.AKhanna@perkinscoie.com); McKnight, Michael D.; Jacobson, Daniel; Theodore, Elisabeth; Majmundar, Amar; Brennan, Stephanie; Riggins, Alyssa

**Subject:** Common Cause, et al. v. Lewis

Counsel:

Please find attached discovery responses in this matter. Copies are being mailed out today as well.

The link to the document production is:

<https://ogletreedeakins.sharefile.com/d-s4f64e3d415f417cb>

**Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.**

4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412

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# **EXHIBIT I**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Case No. 18 CVS 014001

COMMON CAUSE; *et al.*

*Plaintiffs,*

v.

DAVID R. LEWIS, *et al.*

*Legislative Defendants.*

---

**LEGISLATIVE DEFENDANTS' OBJECTIONS AND RESPONSES  
TO PLAINTIFFS' THIRD SET OF INTERROGATORIES**

Legislative Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy K. Moore, and President Pro Tempore of the North Carolina Senate, Philip E. Berger ("Legislative Defendants"), by and through undersigned counsel, serve their objections and responses to Plaintiffs' First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

Legislative Defendants make the following answers, responses, and objections to Plaintiffs' First Set of Interrogatories ("Interrogatories"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Legislative Defendants' present knowledge, information, and belief, as derived from: (a) the knowledge and information of present employees or agents of Legislative Defendants gained in their capacity as such, and (b) a review of the documents and materials maintained by Legislative Defendants that would be likely to contain the information called for by the Interrogatories. These responses are subject to amendment and supplementation as Legislative Defendants acquire additional information and complete their review and analysis and made without prejudice to Legislative Defendants' right to use subsequently discovered or developed information. Legislative Defendants state that their responses to the Interrogatories were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Legislative Defendants respond or object to any Interrogatory should not be taken as an admission that Legislative Defendants accept or admit the existence of any facts assumed by such Interrogatory or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Legislative Defendants respond to part of or all of any Interrogatory is not intended to be, and shall not be, construed as a waiver by Legislative Defendants of any part of any objection to any Interrogatory.

Legislative Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 33 of the North Carolina Rules of Civil Procedure and will not provide

responses or documents to the extent such responses or production would exceed the requirements of those Rules.

Since the North Carolina Rules of Civil Procedure prohibit discovery of privileged matters, Legislative Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

## INTERROGATORIES

1. Identify each person who, to your knowledge, had any involvement in (a) the development, formulation, discussion, consideration, assessment, review, drawing, revision, negotiation, and/or adoption of the 2017 Plans and/or the 2017 Plans Criteria; (b) assisting Legislative Defendants, Representative Dollar, Senator Bishop, Senator Meredith, Senator Wade, Senator Alexander, or any others persons identified under subsection (a) with respect to the development, formulation, discussion, consideration, assessment, review, drawing, revision, negotiation, and/or adoption of the 2017 Plans and/or the 2017 Plans Criteria; and/or (c) any other aspect of the process of developing, formulating, discussing, considering, assessing, reviewing, drawing, revising, negotiating, and/or adopting the 2017 Plans and/or the 2017 Plans Criteria. This request covers individuals including, but not limited to, legislative staff members and contractors, legal counsel, outside political consultants or members of political organizations, and mapmakers such as Dr. Hofeller and persons assisting or working with mapmakers such as Dr. Hofeller.

**RESPONSE:** Legislative Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, information protected by legislative privilege, and information that constitutes work product. Legislative Defendants also object to this interrogatory in that “any involvement” is vague and overbroad.

Subject to and without waiving these objections, in addition to the answers provided in Legislative Defendants’ responses to Plaintiffs’ First Set of Interrogatories, Legislative Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be



produced. In light of the breadth of this interrogatory, all names that appear in all legislative transcripts, documents produced in the *Covington* matter, and all other documents produced are potentially responsive to this interrogatory. In addition, counsel of record in the *Covington* case was consulted for legal advice, as the drawing of the 2017 Plans were required as part of the remedial phase of the *Covington* case.



2. For Legislative Defendants, Representative Dollar, Senator Bishop, Senator Meredith, Senator Wade, Senator Alexander, Mark Coggins, Jim Blaine, and each other person identified in response to Interrogatory 1, describe in detail the nature, setting, and timing of that person's involvement in (a) the development, formulation, discussion, consideration, assessment, review, drawing, revision, negotiation, and/or adoption of the 2017 Plans and/or the 2017 Plans Criteria; (b) assisting Legislative Defendants, Representative Dollar, Senator Bishop, Senator Meredith, Senator Wade, Senator Alexander, or any others persons identified under Interrogatory 1(a) with respect to the development, formulation, discussion, consideration, assessment, review, drawing, revision, negotiation, and/or adoption of the 2017 Plans and/or the 2017 Plans Criteria; and/or (c) any other aspect of the process of developing, formulating, discussing, considering, assessing, reviewing, drawing, revising, negotiating and/or adopting the 2017 Plans and/or the 2017 Plans Criteria. To the extent the relevant individual's involvement encompassed consulting or providing input, direction, or assistance, describe in detail the substance and content of the consultation, input, direction, or assistance.

**RESPONSE: See Response to Interrogatory One.**

3. For Legislative Defendants, Representative Dollar, Senator Bishop, Senator Meredith, Senator Wade, Senator Alexander, Mark Coggins, Jim Blaine, and each other person identified in response to Interrogatory 1, provide a list of each person's professional affiliations at the time of the 2017 redistricting, including but not limited to legislative affiliations, political groups and organizations with which they were affiliated, and any other company or organization for which the individual received a salary or served as a board member.

**RESPONSE:** Legislative Defendants object to providing "any other company or other organization for which the individual received a salary as a board member" as overbroad and unduly burdensome and this information is neither relevant, nor reasonably calculated to the lead to the discovery of admissible evidence. Moreover, Legislative Defendants lack personal knowledge of the "professional" and "legislative affiliations" of former members and staffers in 2017. Subject to and without waiving these objections, Legislative Defendants state that the "professional" and "legislative" affiliations of Legislative Defendants are listed below:

Individual	Affiliations
Speaker Moore	North Carolina Republican Party, North Carolina House Speaker, Rotary Club, Sons of the American Revolution, UNC General Alumni Association, Cleveland County Bar, North Carolina State Bar, RSLC, RLCC, NCSL, SLC, ALEC, GOPAC, National Speaker's Organization.
Representative Lewis	North Carolina House of Representatives, North Carolina Republican Party, Angier Chamber of Commerce, Coats Chamber of Commerce, Dunn Chamber of Commerce, Lillington Chamber of Commerce.
Senator Hise	Republican Party, ALEC
President Pro Tempore Berger	Republican Party, NCSL, ALEC, Republican State Leadership Committee, Republican Legislative Campaign Committee, Senate President's Forum, State Legislative Leaders Foundation, Southern Legislative Conference

4. For Legislative Defendants, Representative Dollar, Senator Bishop, Senator Meredith, Senator Wade, Senator Alexander, Mark Coggins, Jim Blaine, and each other person identified in response to Interrogatory 1, provide the name of the entity or entities that paid that person's fees or expenses for his or her participation in the activities described in Interrogatory 1.

**RESPONSE: To the best of Legislative Defendants' knowledge, Legislative Defendants, Representative Dollar, Mark Coggins, Jim Blaine and Senators Bishop, Meredith, Wade and Alexander did not receive any additional compensation for their work on the 2017 plans. To Legislative Defendants' knowledge, all were paid in accordance with their positions and corresponding salaries within the North Carolina General Assembly.**

Respectfully submitted this the 15th day of February, 2019.

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

By: 

Phillip J. Strach

N.C. State Bar No. 29456

Michael McKnight

N.C. State Bar No. 36932

phil.strach@ogletreedeakins.com

michael.mcknight@ogletreedeakins.com

4208 Six Forks Road, Suite 1100

Raleigh, North Carolina 27609

Telephone: (919) 787-9700

Facsimile: (919) 783-9412

*Counsel for the Legislative Defendants*

BAKER & HOSTETLER, LLP

By: \_\_\_\_\_

Mark E. Braden\*

(DC Bar #419915)

Richard Raile\*

(VA Bar # 84340)

Washington Square, Suite 1100

1050 Connecticut Avenue, N.W.

Washington, DC 20036-5403

mbraden@bakerlaw.com

rraile@bakerlaw.com

Telephone: (202) 861-1500

Facsimile: (202) 861-1783

*Counsel for Legislative*

*\*pro hac vice motion pending*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I caused the foregoing document to be served on all counsel of record by electronic mail in accordance with the agreement of the parties to serve documents in this matter electronically.

This the 15<sup>th</sup> day of February, 2019.

By:   
Phillip J. Strach

# **EXHIBIT J**



IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
Case No. 18 CVS 014001

*Defendants.*

Defendants Representative David R. Lewis, Senator Ralph E. Hise, Jr., Speaker of the North Carolina House Timothy K. Moore, and President Pro Tempore of the North Carolina Senate, Philip E. Berger (“Defendants”), by and through undersigned counsel, serve their supplemental objections and responses to Plaintiffs' First Set of Interrogatories as follows:

Defendants make the following answers, responses, and objections to Plaintiffs' First Set of Interrogatories ("Interrogatories"). Each of the following responses is made subject to any and all objections as to competence, relevance, or other grounds that would require exclusion of such statement if made by a witness present and testifying in court. Any and all such objections and grounds are expressly reserved and may be interposed at the time of the trial.

The responses are based on Defendants' present knowledge, information, and belief, as derived from: (a) the knowledge and information of present employees or agents of Defendants gained in their capacity as such, and (b) a review of the documents and materials maintained by Defendants that would be likely to contain the information called for by the Interrogatories. These responses are subject to amendment and supplementation as Defendants acquire additional information and complete their review and analysis and made without prejudice to Defendants' right to use subsequently discovered or developed information. Defendants state that their responses to the Interrogatories were prepared in consultation with their attorneys and may not exactly match the words or phrases that may be used by individuals in the course of this litigation to describe events, policies, and practices discussed herein.

No incidental or implied admissions are intended by these responses. The fact that Defendants respond or object to any Interrogatory should not be taken as an admission that Defendants accept or admit the existence of any facts assumed by such Interrogatory or that such Response or objection constitutes admissible evidence as to any such assumed facts. The fact that Defendants respond to part of or all of any Interrogatory is not intended to be, and shall not be, construed as a waiver by Defendants of any part of any objection to any Interrogatory.



Defendants will respond to Plaintiffs' Document requests in accordance with Rules 26 and 33 of the North Carolina Rules of Civil Procedure and will not provide responses or documents to the extent such responses or production would exceed the requirements of those Rules.

Since the Federal Rules of Civil Procedure prohibit discovery of privileged matters, Defendants have attempted to interpret each Document Request to call for discoverable matter only. To the extent any response or produced document contains or refers to matters otherwise protected from discovery by the work product doctrine, the attorney-client privilege, or the legislative privilege, no waiver is intended; nor is any waiver intended as to any other matters that are or may be subject to such protection or otherwise privileged.

These responses are provided solely for the purpose of and in relation to this action.

### **INTERROGATORIES**

1. Identify each person who, to your knowledge, had any involvement in drawing or revising district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** Defendants object to this interrogatory to the extent it calls for the production of information protected by the attorney-client privilege, information protected by legislative privilege, and information that constitutes work product. Defendants also object to this interrogatory in that "involvement" is vague.

Without waiving these objections, the 2017 plans were drawn by Dr. Thomas Hofeller, under the direction of Representative David Lewis and Senator Ralph Hise. Representative Lewis and Senator Hise were responsible for developing and proposing the

criteria adopted by the Redistricting Committees that were used by Dr. Hofeller to draw the 2017 plans. Representative Nelson Dollar had input revising the 2017 House Plan, and Senators Bishop, Meredith, Wade, and Alexander were consulted on some revisions to the 2017 Senate Plan. In addition, all members of the General Assembly had opportunities to revise the plans through amendments during the legislative process and members of the public had access to publicly available computer terminals to draft plans. Moreover, the General Assembly authorized the minority caucus to retain consultants to assist with mapdrawing and Defendants believe that one or more consultants was so retained, including Kareem Crayton.

In addition, see Defendants' responses to Plaintiffs' Third Set of Interrogatories.

2. For each person identified in response to Interrogatory 1, describe that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE: See response to Interrogatory No. 1 and to Plaintiffs' Third Set of Interrogatories.**

3. For each person identified in response to Interrogatories 1 and 2, provide the name of any entity with which each such person was affiliated at the time of that person's involvement in the drawing or revising of district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE: Defendants object to Interrogatory 3 on the grounds that “entity with which each such person was affiliated” is both unduly vague and overbroad since the persons in question may have been affiliated with various entities that had nothing to do with redistricting.**

**In addition, see Defendants’ responses to Plaintiffs’ Third Set of Interrogatories.**

4. For each person identified in response to Interrogatories 1 and 2, provide the name of the entity or entities that paid that person's fees or expenses for his or her work in drawing or revising district boundaries for the 2017 Plans, and/or in the development of criteria used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** Representatives Lewis and Dollar and Senator Hise were not paid any fees for their involvement with the 2017 plans. Dr. Hofeller's fees were paid by the North Carolina General Assembly as he worked as a consultant to Representative Lewis and Senator Hise. Defendants also believe that the fees of the consultant retained by the minority caucus, Kareem Crayton, were paid by the General Assembly.

5. Identify each person or entity with whom you communicated before August 10, 2017 regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** Representative Lewis and Senator Hise consulted with legal counsel (specifically counsel of record in the *Covington* matter) during the 2017 redistricting process. Both of them also likely consulted with members of the General Assembly and the public.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.

6. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans before August 10, 2017.

**RESPONSE: To the best recollection of Defendants, no drafts of the 2017 plans existed prior to August 10, 2017.**

7. Identify each person or entity with whom you communicated, between August 10, 2017 and August 21, 2017, regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans, or caused to be communicated with regarding the drawing or revising of, or the criteria to be used in drawing or revising, district boundaries for the 2017 Plans.

**RESPONSE: See objections and response to Interrogatory No. 5.**

**In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.**



8. Identify each person or entity who, to your knowledge, maintained, received, or viewed a draft or copy of all or part of the 2017 Plans between August 10, 2017 and August 21, 2017.

**RESPONSE:** To the best recollection of the defendants, it is likely that Representative Lewis, Representative Dollar, Senator Hise, Jim Blaine, and Mark Coggins viewed all or part of the 2017 plans between August 10, 2017 and August 21, 2017. In addition, the draft 2017 plans were released publicly on August 19, 2017 and accordingly available to every member of the public.

Also, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced.

Counsel of record for legislative defendants in *Covington* also likely viewed draft maps for purposes of providing legal advice.

9. Identify and describe all computers, software, programs, applications, and statistical packages used in developing the 2017 Plans. For each, identify and describe the owner of the computer, software, program, application, or statistic package and who paid for it.

**RESPONSE:** To the knowledge of the defendants, the 2017 plans were drawn on a computer owned by the General Assembly. Dr. Hofeller used the Maptitude software program to draw the plans. A license for this program was also purchased by the General Assembly.

10. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** The criteria used to draw the 2017 plans is the criteria adopted by the Redistricting Committees, is a matter of public record, and has already been provided to Plaintiffs' counsel.

11. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the 2017 Plans, including but not limited to the 2017 Plans Criteria, were prioritized or weighted in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** All constitutionally required criteria had priority over all other criteria including equal population between districts, the *Stephenson* county grouping formula, and the requirement of contiguity. Other factors were considered only when the consideration of such criteria did not conflict with constitutional criteria and could be harmonized with the other criteria. Use of election data was not the predominant criterion used to draft the 2017 plans.

12. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2017 Plans, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

**RESPONSE:** Defendants object to this interrogatory on the grounds that “formulas or algorithms” are vague. Defendants are not aware of any “formulas or algorithms” used to draw the plans. After the plans were developed, reports were prepared showing election results in each district for certain statewide elections. These reports are part of the public record and have already been produced to Plaintiffs’ counsel.

In addition, Dr. Hofeller may have used election results in addition to the other criteria in drawing the Plans. To the best of Defendants’ memory, the Maptitude software used by Dr. Hofeller contained the ability to calculate the average percentage vote of ten statewide elections for districts.

13. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2017 Plans.

**RESPONSE:** Defendants object to this interrogatory on the grounds that “partisanship scores or estimates” are vague. Without waiving this objection, see response to Interrogatory Nos. 10, 11, and 12.

14. Identify and describe all criteria that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE:** In 2017, the legislature did not change districts in 2011 county groups that did not include a district declared illegal in the *Covington* case.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.

15. Identify and describe how all criteria considered or used in drawing or revising district boundaries for the for the 2011 Unchanged Districts were prioritized or weighted in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE:** See response to Interrogatory No. 14.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.



16. Identify and describe all elections data and other measures of partisanship that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE:** See response to Interrogatory No. 14.

In addition, Defendants state that the answer to this interrogatory may be ascertained from a review of the documents produced in this matter, including any supplementations that may be produced, as well as the litigation record from *Dickson v. Rucho*, and specifically the legislative record and deposition transcripts of legislative defendants Lewis and Rucho, and of Dr. Hofeller.

17. Identify and describe how elections data and measures of partisanship were weighted or prioritized in drawing or revising district boundaries for the 2011 Unchanged Districts, including any formulas or algorithms used to develop partisanship scores or estimates for precincts or voting districts in North Carolina.

**RESPONSE: See response to Interrogatory No. 16.**

18. Identify and describe all partisanship scores or estimates for precincts or voting districts that were considered or used in drawing or revising district boundaries for the 2011 Unchanged Districts.

**RESPONSE:** Defendants object to this interrogatory on the grounds that “partisanship scores or estimates” are vague. Without waiving this objection, see response to Interrogatory No. 16.

Respectfully submitted this the 15th day of February, 2019.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I caused the foregoing document to be served on all counsel of record by electronic mail in accordance with the agreement of the parties to serve documents in this matter electronically.

This the 15<sup>th</sup> day of February, 2019.

By: \_\_\_\_\_

Phillip J. Strach

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