

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED
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WAKE CO., C.D.C.
19

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

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.

**PLAINTIFFS' MOTION FOR
CLARIFICATION
PURSUANT TO RULE 45**

Plaintiffs respectfully submit this motion for clarification as to the appropriate procedures for complying with their obligations, under North Carolina Rule of Civil Procedure 45(d1), with respect to certain medical and other apparently sensitive personal information received in response to a third-party subpoena. Plaintiffs recently received a substantial volume of electronic data in response to a third-party subpoena to the daughter of the now-deceased mapmaker who drew the challenged districts, and the parties have reached an impasse over the process for Plaintiffs to provide copies of the materials received to Legislative Defendants and Intervenor Defendants. Based on the file names alone, some of the files received in response to the subpoena appear to contain highly sensitive personal information, such as medical records and tax information of the late mapmaker and his family. Plaintiffs have not looked at any of these files and have no intention of doing so. To avoid further disseminating this sensitive information, which is not relevant to this litigation, Plaintiffs seek to employ a process to filter out these files before reviewing the remaining items—and, importantly here, before providing copies of the subpoenaed materials to Defendants. But Legislative Defendants and Intervenor Defendants have refused to consent to any filtering process, instead demanding that Plaintiffs provide them with full copies of all the materials, including medical, tax, and other sensitive personal information of the late mapmaker and his family. Plaintiffs thus seek clarification from this Court that, consistent with Rule 45(d1), Plaintiffs may employ a filtering process to remove these files before providing copies of the subpoenaed materials to Defendants.

BACKGROUND

The state House and state Senate plans at issue in this case were drawn by an outside consultant hired by Legislative Defendants—Dr. Thomas Hofeller, who passed away in August 2018. On February 13, 2019, Plaintiffs issued a third-party subpoena pursuant to Rule 45 to Dr. Hofeller's daughter, Stephanie Lizon, requesting all documents in Ms. Lizon's possession,

custody, or control relating to Dr. Hofeller's work on the challenged plans, as well as any storage device in Ms. Lizon's possession, custody, or control that contained electronically stored information pertaining to Dr. Hofeller's work on the challenged plans. *See* Ex. A (Attachment to Feb. 13, 2019 subpoena to Stephanie Lizon). Plaintiffs e-mailed a copy of the subpoena to all parties in this case on the same day that the subpoena was issued. Ex. A (letter from Hill to counsel). No party (or non-party) moved to quash or otherwise objected in any way to the subpoena.

On March 13, 2019, Plaintiffs' counsel at Arnold & Porter received a package in the mail from Ms. Lizon responding to the subpoena; the package contained four external hard drives and eighteen thumb drives. *See* Ex. B (3/26/19 e-mail from Jones to Strach). That same day, Plaintiffs' counsel turned over the unopened package to Stroz Friedberg, a leading forensic consulting firm that Plaintiffs had retained in connection with this case. *Id.* On March 20, pursuant to Rule 45(d1), Plaintiffs provided notice to all other parties of the receipt of materials in response to the subpoena to Ms. Lizon. Ex. B (3/20/19 e-mail from Jones to Strach).

A week later, on March 26, Legislative Defendants requested a copy of the materials. Ex. B (3/26/19 e-mail from Strach to Jones). The next day, Plaintiffs e-mailed opposing counsel explaining that, in Stroz Friedberg's processing of the data, it had become apparent from the file and folder names that certain files and folders contained sensitive personal information not relevant to this case, such as medical or family information or tax returns of the late mapmaker and his family. Ex. B. (3/27/19 e-mail from Theodore to counsel). Plaintiffs explained that they had not opened any of these materials and would not do so, and that Plaintiffs did not believe it would be appropriate or in the interest of any party to further disseminate these files. *Id.*

In light of these concerns, Plaintiffs proposed a three-step approach to providing Defendants with copies of the materials received in response to the subpoena. First, Stroz Friedberg would search for specified keywords in file names and file paths that would indicate that the underlying document contains personal information, such as “tax,” “medical,” and the names of Dr. Hofeller’s family members. *Id.* Stroz Friedberg would separate out any files whose file names or file paths contained one of these keywords, and then make a forensically sound copy of everything that remained on the hard drives and thumb drives, and provide that copy to the requesting defendants. *Id.* Second, because the keyword search may be underinclusive in picking up sensitive personal information, Plaintiffs would designate any sensitive personal information that might remain on the copies provided to defendants as confidential pursuant to the parties’ stipulated protective order. *Id.* Third, for the files filtered out pursuant to the keyword search, Plaintiffs would provide Ms. Lizon the option of having them returned to her, and in all events Plaintiffs themselves would not look at these files. *Id.*

On March 28, Plaintiffs notified opposing counsel that Plaintiffs had received a cost estimate for providing two copies pursuant to this proposed approach, and the cost would be a total of \$3,500 to \$4,000. Ex. B (3/28/19 e-mail from Theodore to counsel). That cost would be split between the two sets of defendants then-requesting copies (as of this filing, all three sets of defendants have now requested copies). State Defendants informed Plaintiffs that they consented both to splitting these costs with other defendants and also to Plaintiffs’ proposed approach for filtering out sensitive personal information. Ex. B (4/1/19 e-mail from Cox to Theodore and 3/28/19 e-mail from Cox to Theodore). Legislative Defendants, however, did not consent. They informed Plaintiffs that they did “not agree with the proposed process or the

splitting of the costs.” Ex. B (4/1/19 e-mail from Strach to Theodore). Legislative Defendants asserted that the North Carolina Rules of Civil Procedure required Plaintiffs to produce all of the subpoenaed files without any filtering to remove irrelevant medical, tax, and other sensitive personal information, and on costs, they asserted that “[c]ost-shifting can occur after the final judgment in the case.” *Id.*

Plaintiffs responded that Rule 45(d1) requires the party that received materials in response to a subpoena to provide copies “at the expense of the inspecting party,” and with respect to the sensitive personal information, Plaintiffs offered to provide Legislative Defendants a list of the keywords that would be used to search the file and folder names. *Id.* Legislative Defendants again refused to agree to any filtering at all. Ex. B (4/2/19 e-mail from Strach to Jones). Thereafter, Intervenor Defendants also requested copies of the materials, and, like Legislative Defendants, indicated that they did not consent to filtering out of sensitive personal information. *Id.* (4/3/19 e-mail from Branch to Jacobson and 4/3/19 email from Branch to Jones).

Plaintiffs notified Legislative Defendants and Intervenor Defendants throughout this meet-and-confer process that Plaintiffs intended to file a motion with the Court seeking permission to filter out the sensitive personal information if not all defendants consented. *See* Ex. B (4/3/19 e-mail from Jones to Strach; 4/4/19 e-mail from Theodore to Branch). State Defendants, who do consent to the proposed filtering process, have indicated that they are available for a hearing the week of April 8 if the Court wishes to hold a hearing. Pursuant to this Court’s March 13 case management order, Plaintiffs asked Legislative Defendants and Intervenor Defendants how many days they would like to file a response brief, and whether they

were available for a hearing on the motion the week of April 8. Intervenor Defendants have not yet provided that information. Legislative Defendants indicated earlier today that they will take a position on the briefing schedule after reviewing this motion once filed.

ARGUMENT

I. Medical and Other Sensitive Personal Information Received in Response to the Subpoena Should Be Removed Before the Remaining Materials Are Provided to Other Parties

It is apparent from the file and folder names in the materials received from Ms. Lizon that the materials include highly sensitive information such as medical records, tax information, and personal family information of the late mapmaker, Dr. Hofeller, and his family. Such materials plainly are irrelevant to the merits of this lawsuit, and Plaintiffs do not believe it is in the interest of any party to copy and further disseminate such information. There would be no prejudice to defendants from adhering to this process, as Plaintiffs' counsel would never look at—or even possess—the files that were filtered out.

Moreover, to the extent that Legislative Defendants and Intervenor Defendants have concerns as to the filtering process itself, Plaintiffs' computer forensics vendor Stroz Friedberg stands ready to confer with any vendor for Legislative Defendants and/or Intervenor Defendants on the methodology to be employed. And if necessary, Legislative Defendants' and Intervenor Defendants' vendor(s) could be physically present to observe as Stroz Friedberg carries out the filtering. *See* Ex. B (4/4/19 e-mail from Theodore to Branch).

Plaintiffs thus propose the following process: (1) Stroz Friedberg filters out files based on a keyword search on file names and folder name, after the parties' vendors confer on the methodology to be used if necessary; (2) Stroz Friedberg makes an image of all of the files that remain, post-filtering, and provides copies of that image to Plaintiffs and each set of defendants;

(3) Plaintiffs would indicate that any sensitive personal information that remains on the copies provided to defendants is designated as “Highly Confidential” pursuant to the stipulated protective order; (4) pursuant to Rule 45(d1), each set of defendants splits the expense only of making the copies of the non-filtered files (Plaintiffs would bear the expense of performing the filtering itself); and (5) Plaintiffs provide Ms. Lizon the option of returning the filtered items to her, and in all events Plaintiffs’ counsel would not look at or possess the filtered out files.

This proposed process is consistent with the letter and spirit of Rule 45(d1), in addition to being protective of sensitive personal information that is irrelevant to this lawsuit. While Legislative Defendants and Intervenor Defendants have demanded access to the original, unfiltered hard drives and thumb drives, Rule 45(d1) allows the Court to authorize Plaintiffs to provide true and accurate copies of the files, after removing out irrelevant information. The Superior Court’s decision in *Beam ex rel. Mauney v. Beam Rest Home, Inc.*, No. 13 CVS 4710, 2014 WL 4748600 (N.C. Super. Sept. 25, 2014), is instructive. There, a shareholder sought access to a corporation’s records pursuant to a statute that, like Rule 45(d1), affords shareholders the right to “inspect and copy” corporate records. *Id.* at *2. The company provided the shareholder copies of the pertinent records, but the plaintiff “nevertheless insist[ed] on an inspection of Defendant’s original records.” *Id.* a *4. The court rejected this request, holding that the inspection statute did not give the plaintiff the right to inspect the original records where he had “not identified any evidence to suggest that the copies he has received are not true and accurate duplicate copies.” *Id.* Even more analogously to the present case, in *McCurdy Grp. v. Am. Biomedical Grp., Inc.*, 9 F. App’x 822 (10th Cir. 2001), the Tenth Circuit affirmed the denial of a party’s request “to conduct a physical inspection of [an original] computer hard

drive(s).” *Id.* at 831. The court explained that there was no reason to doubt that the producing party had “produced *copies of all relevant and nonprivileged documents* from the hard drive(s),” and that sufficed to discharge the party’s discovery obligations. *Id.* (emphasis added). Here, there is no reason to doubt that Stroz Friedberg, one of the nation’s leading forensic consulting firms, will produce true and accurate copies of all relevant information, and Plaintiffs have offered various accommodations to assuage any concerns defendants may have, including in particular permitting their vendors to be present during the filtering process.¹

If the Court disagrees with Plaintiffs and orders Plaintiffs to provide full copies of the materials without any filtering, Plaintiffs will of course comply with the Court’s order. But Plaintiffs’ counsel at Arnold & Porter are unable to disseminate such files containing such sensitive personal medical and financial information absent a court order.


WHEREFORE, Plaintiffs request that the Court clarify that Plaintiffs may provide copies of the materials received from Ms. Lizon pursuant to the process described in this motion.

Respectfully submitted this the 4th day of April, 2019

¹ Although the parties have not yet resolved how the copying process will take place, Plaintiffs are optimistic that the parties will be able to work out those details once they receive guidance from the Court on whether filtering should occur or not.

POYNER SPRUILL LLP

By: _____


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**Admitted Pro Hac Vice*

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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This the 4th day of April, 2019.



Edwin M. Speas, Jr.

EXHIBIT A

Poyner Spruill^{LLP}

February 13, 2019

VIA U.S. MAIL

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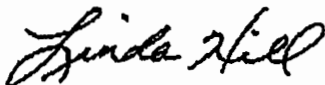
**RE: Common Cause, et al., v. Representative David R. Lewis, In His Official Capacity as Senior
Chairman of The House Select Committee on Redistricting, et al.
18-CVS-014001, Wake County Superior Court**

Dear Counsel:

Enclosed please find a copy of the Subpoena issued to Stephanie Hofeller Lizon and a filed-stamped copy of the Voluntary Dismissal Without Prejudice of Defendant The State of North Carolina in connection with the above-referenced matter.

If you have any questions, please do not hesitate to call Caroline Mackie at (919) 783-1108.

Very truly yours,



Linda C. Hill
Legal Secretary

Enclosures

STATE OF NORTH CAROLINA

File No.

18-CVS-14001

WAKE County

In The General Court Of Justice
 District Superior Court Division

COMMON CAUSE et al.,

Additional File Numbers

VERSUS

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

SUBPOENA

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

Party Requesting Subpoena

State/Plaintiff Defendant

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

TO Name And Address Of Person Subpoenaed
 Stephanie Hofeller Lizon c/o Tom Sparks Esq.
 Fiduciary Litigation Group
 223 S. West St., Suite 900
 Raleigh NC 27603

Alternate Address

Telephone No.

919-229-0845

Telephone No.

YOU ARE COMMANDED TO: (check all that apply)

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

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

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

Date To Appear/Produce, Until Released

02/22/2019

Time To Appear/Produce, Until Released

9:00

AM PM

Date

2/13/2019

Name And Address Of Applicant Or Applicant's Attorney

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

Signature

Caroline P. Mackie

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

Telephone No. Of Applicant Or Applicant's Attorney

RETURN OF SERVICE

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

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

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

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

Service Fee \$ <input type="checkbox"/> Paid <input type="checkbox"/> Due	Date Served	Name Of Authorized Server (type or print)	Signature Of Authorized Server	Title/Agency
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NOTE TO PERSON REQUESTING SUBPOENA: A copy of this subpoena must be delivered, mailed or faxed to the attorney for each party in this case. If a party is not represented by an attorney, the copy must be mailed or delivered to the party. This does not apply in criminal cases.

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

(c) Protection of Persons Subject to Subpoena

- (1) **Avoid undue burden or expense.** - A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on a person subject to the subpoena. The court shall enforce this subdivision and impose upon the party or attorney in violation of this requirement an appropriate sanction that may include compensating the person unduly burdened for lost earnings and for reasonable attorney's fees.
- (2) **For production of public records or hospital medical records.** - Where the subpoena commands any custodian of public records or any custodian of hospital medical records, as defined in G.S. 8-44.1, to appear for the sole purpose of producing certain records in the custodian's custody, the custodian subpoenaed may, in lieu of personal appearance, tender to the court in which the action is pending by registered or certified mail or by personal delivery, on or before the time specified in the subpoena, certified copies of the records requested together with a copy of the subpoena and an affidavit by the custodian testifying that the copies are true and correct copies and that the records were made and kept in the regular course of business, or if no such records are in the custodian's custody, an affidavit to that effect. When the copies of records are personally delivered under this subdivision, a receipt shall be obtained from the person receiving the records. Any original or certified copy of records or an affidavit delivered according to the provisions of this subdivision, unless otherwise objectionable, shall be admissible in any action or proceeding without further certification or authentication. Copies of hospital medical records tendered under this subdivision shall not be open to inspection or copied by any person, except to the parties to the case or proceedings and their attorneys in depositions, until ordered published by the judge at the time of the hearing or trial. Nothing contained herein shall be construed to waive the physician-patient privilege or to require any privileged communication under law to be disclosed.
- (3) **Written objection to subpoenas.** - Subject to subsection (d) of this rule, a person commanded to appear at a deposition or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or tangible things may, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, serve upon the party or the attorney designated in the subpoena written objection to the subpoena, setting forth the specific grounds for the objection. The written objection shall comply with the requirements of Rule 11. Each of the following grounds may be sufficient for objecting to a subpoena:
- The subpoena fails to allow reasonable time for compliance.
 - The subpoena requires disclosure of privileged or other protected matter and no exception or waiver applies to the privilege or protection.
 - The subpoena subjects a person to an undue burden or expense.
 - The subpoena is otherwise unreasonable or oppressive.
 - The subpoena is procedurally defective.
- (4) **Order of court required to override objection.** - If objection is made under subdivision (3) of this subsection, the party serving the subpoena shall not be entitled to compel the subpoenaed person's appearance at a deposition or to inspect and copy materials to which an objection has been made except pursuant to an order of the court. If objection is made, the party serving the subpoena may, upon notice to the subpoenaed person, move at any time for an order to compel the subpoenaed person's appearance at the deposition or the production of the materials designated in the subpoena. The motion shall be filed in the court in the county in which the deposition or production of materials is to occur.
- (5) **Motion to quash or modify subpoena.** - A person commanded to appear at a trial, hearing, deposition, or to produce and permit the inspection and copying of records, books, papers, documents, electronically stored information, or other tangible things, within 10 days after service of the subpoena or before the time specified for compliance if the time is less than 10 days after service, may file a motion to quash or modify the subpoena. The court shall quash or modify the subpoena if the subpoenaed person demonstrates the existence of any of the reasons set forth in subdivision (3) of this subsection. The motion shall be filed in the court in the county in which the trial, hearing, deposition, or production of materials is to occur.

- (6) **Order to compel: expenses to comply with subpoena.** - When a court enters an order compelling a deposition or the production of records, books, papers, documents, electronically stored information, or other tangible things, the order shall protect any person who is not a party or an agent of a party from significant expense resulting from complying with the subpoena. The court may order that the person to whom the subpoena is addressed will be reasonably compensated for the cost of producing the records, books, papers, documents, electronically stored information, or tangible things specified in the subpoena.
- (7) **Trade secrets; confidential information.** - When a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, a court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or when the party on whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot otherwise be met without undue hardship, the court may order a person to make an appearance or produce the materials only on specified conditions stated in the order.
- (8) **Order to quash: expenses.** - When a court enters an order quashing or modifying the subpoena, the court may order the party on whose behalf the subpoena is issued to pay all or part of the subpoenaed person's reasonable expenses including attorney's fees.

(d) Duties in Responding to Subpoena

- (1) **Form of response.** - A person responding to a subpoena to produce records, books, documents, electronically stored information, or tangible things shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.
- (2) **Form of producing electronically stored information not specified.** - If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it ordinarily is maintained or in a reasonably useable form or forms.
- (3) **Electronically stored information in only one form.** - The person responding need not produce the same electronically stored information in more than one form.
- (4) **Inaccessible electronically stored information.** - The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, after considering the limitations of Rule 26(b)(1a). The court may specify conditions for discovery, including requiring the party that seeks discovery from a nonparty to bear the costs of locating, preserving, collecting, and producing the electronically stored information involved.
- (5) **Specificity of objection.** - When information subject to a subpoena is withheld on the objection that it is subject to protection as trial preparation materials, or that it is otherwise privileged, the objection shall be made with specificity and shall be supported by a description of the nature of the communications, records, books, papers, documents, electronically stored information, or other tangible things not produced, sufficient for the requesting party to contest the objection.

INFORMATION FOR WITNESS

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

DUTIES OF A WITNESS

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

BRIBING OR THREATENING A WITNESS

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

WITNESS FEE

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

ATTACHMENT TO FEBRUARY 13, 2019 SUBPOENA TO STEPHANIE LIZON

DEFINITIONS

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

1. The term "document," whether singular or plural, is used herein in the broadest sense of the term and means each and every writing of whatever nature, and shall mean the original and any draft or copy that differs in any way from the original of any written or graphic matter, however produced or reproduced, and shall mean, without limitation, each and every tangible thing from which information can be processed or transcribed from disk, diskette, compact disc, tape or some other electronic media or data computations. The term includes, but it is not limited to, letters, electronic mail ("email")¹ and any attachments, messages, facsimile transmissions, telegrams, memoranda, telex messages, reports, books, agreements, correspondence, contracts, financial statements, instruments, ledgers, journals, accountings, minutes of meetings, payrolls, studies, calendar and diary entries, notes, charts, schedules, tabulations, maps, work papers, brochures, evaluations, memoranda of telephone conversations, audio and video tape recordings, internal communications, bills, tapes, computer printouts, drawings, designs, diagrams, exhibits, photographs, reproductions, any marginal comments appearing on any document and copies of documents which are not identical duplicates of the originals (e.g., because handwritten or "blind copy" notes or notations appear thereon or are attached thereto). The term "document(s)" includes the defined term "Electronically-Stored Information," which is defined below. The term "document" specifically seeks the production of Electronically-Stored Information in native format.
2. The term "Electronically-Stored Information" or "ESI" shall mean any and all electronic data or information stored on a computing device. Information and data is considered "electronic" if it exists in a medium that can only be read through the use of computing device. This term includes but is not limited to databases; all text file and word-processing documents (including metadata); presentation documents; spreadsheets; graphics, animations, and images (including but not limited to "JPG, GIF, BMP, PDF, PPT, and TIFF files); email, email strings, and instant messages (including attachments, logs of email history and usage, header information and "deleted" files); email attachments; calendar and scheduling information; cache memory; Internet history files and preferences; audio; video, and audiovisual recordings; voicemail stored on databases; networks; computers and computer systems; computer system activity logs; servers; archives; back-up or disaster recovery systems; hard drives; discs; CD's; diskettes; removable drives; tapes; cartridges and other storage media; printers; scanners; personal digital assistants; computer calendars; handheld wireless devices; cellular telephones; pagers; fax machines; and voicemail systems. This term includes but is not limited to on-screen information, system data, archival data, legacy data, residual data, and metadata that may not be readily viewable or accessible, and all file fragments and backup files.

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

3. This Subpoena further requests the forensic copying and examination of ESI, as well as for the production of ESI. The purpose of obtaining ESI from you is to obtain all meta-data, residual data, file fragments, and other information that is not reasonably accessible for forensic examination of authenticity. Any storage device that contains, or may contain, ESI requested shall be produced for forensic copying and examination. Forensic copying usually may be done on-site, without taking possession of your computing devices, at minimal inconvenience, cost, or interruption to you. The forensic copying will eliminate the need for you to search all storage devices or sift through a vast amount of information. Once forensic copies are made, the parties may agree on search terms to reduce costs and to preserve privacy of non-discoverable information. You are encouraged to comply reasonably and to confer immediately with the undersigned counsel for an agreement on each party's respective rights and responsibilities.
4. The term "redistricting," if not otherwise qualified, shall be construed to mean the redistricting of the North Carolina State Senate and State House districts in 2011 and 2017.

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

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

CERTIFICATE OF SERVICE

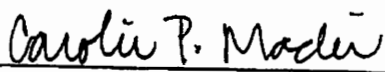
I hereby certify that I have this day served a copy of the foregoing *by email*, addressed to the following persons at the following addresses which are the last addresses known to me:

Amar Majmundar
Stephanie A. Brennan
NC Department of Justice
P.O. Box 629
114 W. Edenton St.
Raleigh, NC 27602
amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
*Counsel for the State of North Carolina and State Board of
Elections and Ethics Enforcement and its members*

Phillip J. Strach
Michael McKnight
Alyssa Riggins
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Phillip.strach@ogletree.com
Michael.mcknight@ogletree.com
Alyssa.riggins@ogletree.com

E. Mark Braden
Richard B. Raile
Trevor M. Stanley
Baker & Hostetler, LLP
Washington Square, Suite 1100
1050 Connecticut Ave., N.W.
Washington, DC 20036-5403
rraile@bakerlaw.com
mbraden@bakerlaw.com
tstanley@bakerlaw.com
Counsel for the Legislative Defendants

This the 13th day of February, 2019.



Caroline P. Mackie

EXHIBIT B

Jacobson, Daniel

From: Strach, Phillip J. <phil.strach@ogletree.com>
Sent: Thursday, April 4, 2019 11:39 AM
To: Theodore, Elisabeth; John Branch
Cc: Jacobson, Daniel; Jones, Stanton; Cox, Paul; Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; Denton Worrell; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth:

As I've previously noted we oppose any filtering but we won't know when we can respond to your motion until we've seen it. In the meantime, please let us know how much data is in the non-filtered materials and also send us an index of the files.

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 | www.ogletree.com | [Bio](#)

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Thursday, April 04, 2019 10:13 AM
To: John Branch <JBranch@shanahanlawgroup.com>
Cc: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Cox, Paul <pcox@ncdoj.gov>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: Re: Common Cause v. Lewis -- notice of subpoena compliance

John, apologies for the multiple emails. One amendment to my prior email -- Stroz has informed us that if the court does permit the filtering, then they could likely arrange it so that your vendor is present to observe the filtering process if that's what you want for comfort as to the process. As I mentioned, we will get the motion on file.

Best,
Elisabeth

On Apr 4, 2019, at 9:29 AM, Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com> wrote:

John, thanks for your response. We understand your position on the filtering, but as mentioned, this is something that we are going to bring to the court for resolution. It is apparent that much of this process will depend on the court's answer to whether we can filter, and therefore we believe it is most efficient to receive an answer from the court on that and then work out the mechanics of the copying process after. To clarify, though, if the court permits us to do the filtering, that would mean that our vendor would perform the filtering in its lab on its own, create a new image of just the non-filtered items, and then provide your vendor access to that new image.

Pursuant to the court's case management order, could you tell us by 2 pm today if you will respond to the motion regarding the filtering, how many days you would like to respond, and your availability for a hearing next week if the court decides to hold a hearing?

Best,

Elisabeth

On Apr 3, 2019, at 5:24 PM, John Branch <JBranch@shanahanlawgroup.com> wrote:

Dan,

Thanks for the information on the lack of objections and the date of receipt.

The rule provides that we get access to what you all received, without filtering. I am not saying that there is no possible limitation at all on the use of the information, especially since I have not seen the content of the drives. However, to the extent that Plaintiffs received the drives we get to inspect and copy the entirety of what Plaintiffs have.

Also, let me know what potential costs you all are concerned about on your end. I'm not sure I understand where they will come from given that Plaintiffs would simply be making the drives available to our vendor to copy at Plaintiffs' vendor's location, but I could be missing something.

Best regards,

John

John E. Branch III | Partner

<image001.png>

128 E. Hargett Street | Third Floor
Raleigh, NC 27601

Phone: (919) 856-9494

Email: jbranch@shanahanlawgroup.com

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From: Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>
Sent: Wednesday, April 3, 2019 12:33 PM
To: John Branch <JBranch@shanahanlawgroup.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

John,

Thanks for your response. With respect to the issue of copying, if we are understanding your email, you are asking for your vendor to go the office of our vendor (Stroz Friedberg) in Washington, DC, and make a copy of all of the hard drives and thumb drives on site yourself, without taking the originals of the drives. Is that correct? If so, we are amenable to that approach (subject to resolution of the separate issue of the medical and other personal files, discussed below), but that is different from what we interpreted Phil as proposing yesterday. If we went this route, we would pass on any costs that we and Stroz incur in facilitating this process. John and Phil, could you each let us know if this approach is acceptable to you? And Paul, if the Intervenor Defendants and Legislative Defendants are making their own copies on site at Stroz in DC, please let us know how the State Defendants would like to proceed.

John, your email does not address the issue of filtering out medical and sensitive personal information, without any party reviewing it or any further dissemination. Could you please let us know Intervenor-Defendants position on this issue? As for your other questions, we explained several emails down on this chain (on which you were copied) that we received the materials from Ms. Lizon on March 13. Per the attached, the subpoena to Ms. Lizon was issued on February 13, several weeks before the intervenors became parties to the case. Neither Ms. Lizon nor any party asserted any objections to the subpoena.

Bet,
Dan

Daniel Jacobson
Senior Associate

Arnold & Porter
601 Massachusetts Ave., NW
Washington | District of Columbia 20001-3743
T: +1 202.942.5602

Daniel.Jacobson@arnoldporter.com | www.arnoldporter.com

From: John Branch <JBranch@shanahanlawgroup.com>

Sent: Wednesday, April 3, 2019 11:37 AM

To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark

<MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>;

Stanley, Trevor M. <tstanley@bakerlaw.com>; Denton Worrell

<DWorrell@shanahanmcdougal.com>; Nate Pencook

<NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>;

Mackie, Caroline P. <CMackie@poynerspruill.com>;

zzz.External.AKhanna@perkinscoie.com <AKhanna@perkinscoie.com>;

melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>;

Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth

<Elisabeth.Theodore@arnoldporter.com>

Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton,

I don't think you are correct in your reading of Rule 45(d1). Under the rule, Defendants have an opportunity to both inspect and copy the hard drives and thumb drives you received. Rule 45(d1) states:

(d1) Opportunity for **Inspection** of Subpoenaed Material. - A party or attorney responsible for the issuance and service of a subpoena shall, within five business days after the receipt of material produced in compliance with the subpoena, serve all other parties with notice of receipt of the material produced in compliance with the subpoena and, upon request, shall provide all other parties a reasonable opportunity to **copy and inspect** such material at the expense of the inspecting party.

(emphasis added). Thus, under Rule 45(d1), Defendants have an opportunity to both inspect and make copies of the materials you have received. Plaintiffs must provide such an opportunity to Defendants. Inspection of the drives Plaintiffs received pursuant to the subpoena is expressly provided for under Rule 45(d1), and Defendants are well within their rights to both ask to inspect the drives and make their own copies of them. This is only logical – it would be inherently unfair for any party to receive items and information pursuant to a subpoena but then not make them available to all parties in the litigation.

Intervenor-Defendants are hereby exercising their right for a reasonable opportunity to inspect and copy the four hard drives and eighteen thumb drives produced by Ms. Lizon. We request either that you provide the original hardware that you received to our vendor for copying or that you allow our vendor to copy the hardware on site.

In addition, while it is possible I was not copied on earlier emails due to our later entry in the case, it is unclear to me when Ms. Lizon provided the drives to Plaintiffs, how they were sent to you all, and whether she asserted any objections or other rights in responding to the subpoena or searching for responsive documents. Accordingly, please provide us with any correspondence exchanged between Plaintiffs' counsel and Ms. Lizon regarding the subpoena and identify the date or dates on which Plaintiffs received the four hard drives and eighteen thumbdrives produced in response to the subpoena.

Best regards,

John Branch

John E. Branch III | Partner

<image001.png>

128 E. Hargett Street | Suite 300
Raleigh, NC 27601

Phone: (919) 856-9494

Email: jbranch@shanahanlawgroup.com

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From: Jones, Stanton [<mailto:Stanton.Jones@arnoldporter.com>]
Sent: Wednesday, April 03, 2019 8:59 AM
To: Strach, Phillip J. <phil.strach@ogletree.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanlawgroup.com>; Denton Worrell <DWorrell@shanahanmcdougal.com>; Nate Pencook <NPencook@shanahanlawgroup.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, if I'm understanding your email correctly, you are asking us to give you the originals of the media (i.e., the original hard drives and thumb drives we received from Ms. Lizon). Please let us know if that's not what you are requesting, but if it is, that is not something we are under any obligation to do. If you have authority to the contrary, please let us know. We believe our obligation is to provide you with copies of the materials we received in response to the subpoena, and the most straightforward way to do that is for our vendor to make forensically sound copies and send them to you or your vendor. Indeed, we note that this is exactly the procedure you are following with respect to our request to copy and inspect the General Assembly computer purportedly used to create the 2017 plans.

With respect to filtering out sensitive personal information, we intend to go to the court on that. We will file a motion with the court requesting permission to follow the approach we have proposed, but if the court does not authorize such and instead orders us to provide you complete copies of everything on the media, including the sensitive and irrelevant personal information, we will of course comply with the court order.

We would like to make our motion swiftly to facilitate the provision of this material to you and to the State Defendants as quickly as possible; we would have made the motion last week, when we first proposed the filtering process, if we had received your response at that time. We asked you yesterday to advise us of when you would like to file a response to our motion, and when you are available for a telephonic hearing, but have not heard back on those questions. Please let me know by 2pm today when you would like to file a response, and when you are available for a hearing. We can be available Monday or Tuesday of next week.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Tuesday, April 02, 2019 5:30 PM
To: Jones, Stanton; Cox, Paul
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel; Gersch, David P.; Theodore, Elisabeth
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton,

The Rules require plaintiffs to allow us a "reasonable opportunity to copy and inspect such material at the expense of the inspecting party." We will of course bear the expense of any copy we make for our own use. We can provide you the name and address of our vendor to which the files can be sent to make our copy. In the alternative, we can have the vendor go to your site to retrieve the materials. We do not have any other cost-sharing obligations beyond that based on the plain text of the rule. The Rule also does not provide for a party filtering the data it received from a subpoena prior to making it available for inspection and copying. There is no basis for your refusal to allow us to inspect and copy all of the material as the Rule allows. Please confirm that you will allow us to make this inspection and copying and we will immediately provide you with instructions for shipping the materials to our vendor for copying (or alternatively make arrangements to retrieve the materials).

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 | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Tuesday, April 02, 2019 9:52 AM
To: Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rRaile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, your email below raises two issues.

First, on the issue of cost, Rule 45(d1) of the North Carolina Rules of Civil Procedure expressly states that our obligation is to copy and provide the materials we received in response to our subpoena "at the expense of the inspecting party." To my knowledge, we have no obligation to copy and provide these materials unless and until you (and others who have requested copies) agree to bear the expense. If you have a different understanding, please provide authority for it. Alternatively, let us know if legislative defendants agree to bear the expense per Elisabeth's email below. Note that state defendants have already agreed to split the quoted expense with legislative defendants.

Second, on the issue of medical and other apparently sensitive personal information, we fail to see how it is in anyone's interest to copy and disseminate such information, which obviously has no bearing on this case but raises serious privacy concerns. We would be happy to send you a list of the keywords we would use to search file and folder names for materials we would segregate out and not review or disseminate.

Please let us know by 6:30pm ET today whether legislative defendants will revisit their position on both issues and agree to our approach. If you do not consent to this approach, we will file a motion seeking clarification as to the cost issue and the court's approval to follow our approach on the second issue. Pursuant to the March 13 Case Management Order, please let us know by 6:30pm ET today when you would like to file a response to our motion and also your availability for a hearing on the motion early next week.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Monday, April 01, 2019 9:05 PM
To: Cox, Paul; Theodore, Elisabeth; Jones, Stanton
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth: we do not agree with the proposed process or the splitting of the costs. We believe plaintiffs should comply with the North Carolina Rules of Civil Procedure and produce to us all of the subpoenaed files, without filtering. We are capable of protecting the confidentiality of the materials. Cost-shifting can occur after the final judgment in the case. Please produce these files immediately. 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 | www.ogletree.com | [Bio](#)

From: Cox, Paul <pcox@ncdoj.gov>
Sent: Monday, April 01, 2019 12:10 PM
To: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <Phil.Strach@ogletreedeaikins.com>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Elisabeth,

Thank you for this additional info and clarification.

The State Defendants would be willing to split with the Legislative Defendants the quoted cost for a copy of the materials.

Paul

<image002.jpg> **Paul M. Cox**
Special Deputy Attorney General
Phone: (919)716-6932
pcox@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603

Please note messages to or from this address may be public records.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Thursday, March 28, 2019 3:45 PM
To: Cox, Paul <pcox@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>
Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Hi Paul,

We've now received the cost estimate from our vendor, which is \$3500 to \$4000 total for creating two copies (one for the State Defendants and one for the Legislative Defendants). That does not include the cost of processing the data or performing the keyword searching to filter out sensitive documents as described in the prior email; it is just the cost of creating physical images of each of the 22 external drives after the filtering is complete. The cost of the copying is driven largely by the size of the materials and the cost of creating images of physical drives. The size of the materials makes it infeasible to send via FTP. Let us know if you would like to discuss this further.

Legislative Defendants – please let us know whether you agree to the process we have proposed and to splitting the cost, or if you would like to discuss.

Best,
Elisabeth

From: Cox, Paul [<mailto:pcox@ncdoj.gov>]
Sent: Thursday, March 28, 2019 10:01 AM
To: Theodore, Elisabeth; Jones, Stanton; Strach, Phillip J.
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Hi Elisabeth,

This plan seems reasonable to the State Defendants. We're really only interested in having a copy of whatever information that the plaintiffs retain from the subpoena. Once you decide what you believe is properly the subject of discovery, we can send you an FTP link or work out some other means of transferring the files. We can agree to treat all of the documents as confidential when so designated. I'm not sure what cost would be involved in transferring a copy of the files that you are already processing for your own purposes. We're happy to discuss to better understand.

Paul

<image002.jpg> **Paul M. Cox**
Special Deputy Attorney General
Phone: (919)716-6932
pcox@ncdoj.gov
114 W. Edenton St., Raleigh, NC 27603

Please note messages to or from this address may be public records.

From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>
Sent: Wednesday, March 27, 2019 5:27 PM
To: Jones, Stanton <Stanton.Jones@arnoldporter.com>; Strach, Phillip J. <phil.strach@ogletree.com>

Cc: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>; Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>

Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Counsel:

In the course of our vendor's processing of the materials we received in response to our subpoena of Ms. Lizon, it has become apparent from the file and folder names that those materials may include personal information, such as tax returns and medical and family information. We have not opened any of these files and will not do so. Because the files at issue appear from their names to be sensitive, personal, and plainly irrelevant to the litigation, we do not believe that it would be appropriate or in the interest of any party to further disseminate these files. In light of Legislative Defendants' and State Defendants' requests for copies of the materials, we would propose the following approach.

First, our vendor Stroz would search for keywords in file and folder names that would indicate that the underlying document contains personal information, such as "tax," "medical," and the names of Dr. Hofeller's family. Our vendor would then pull out these personal files and then make a copy of everything that remains, and provide you with that copy.

Second, because the keyword search may be underinclusive, when we provide you with the remaining materials, we will designate all sensitive personal information that may remain, including personal financial, family, and health information, as confidential pursuant to the parties' forthcoming protective order.

Third, with respect to documents that were identified by the keyword search, we will provide Ms. Lizon with the option of having them returned to her. Again, we would not look at any document received in response to the subpoena to Ms. Lizon unless we are also providing that document to the other parties who have requested copies of the materials.

If this approach sounds acceptable to you, we can obtain a cost estimate. Please let us know if you would like to discuss this further.

Best,
Elisabeth

Elisabeth S. Theodore
Partner

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Washington | District of Columbia 20001-3743
T: +1 202.942.5891
Elisabeth.Theodore@arnoldporter.com | www.arnoldporter.com

From: Jones, Stanton
Sent: Tuesday, March 26, 2019 2:57 PM
To: Strach, Phillip J.
Cc: Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Cox, Paul; Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.
Subject: Re: Common Cause v. Lewis -- notice of subpoena compliance

Phil:

We received the electronic media on Wednesday, March 13, and provided them to the vendor the same day.

The vendor is Stroz Friedberg.

I'm not aware of any obligation to consult you on which vendor we'd use to process materials we received in response to our subpoena. We aren't asking legislative defendants to share the cost of processing the materials, only the cost of providing a copy to you, per Rule 45. Certainly let me know if you have a different understanding.

The vendor is still processing the materials.

We are inquiring with the vendor about the cost, logistics, and timing of providing you a copy. Same for the state defendants who also have requested a copy. We will let you know as soon as we have this information.

Regards,
Stanton

Sent from my iPhone

On Mar 26, 2019, at 10:11 AM, Strach, Phillip J. <phil.strach@ogletree.com> wrote:

Stanton: Thanks. Please let us know the date the media was received by plaintiffs, when plaintiffs sent them off to be processed, and which entity is being used to process the media. I note for now that we were not asked for our input on which entity to use or provided any information about possible costs prior to sending the data to be processed. 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 | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Tuesday, March 26, 2019 10:02 AM
To: Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Phil, the items we received were all electronic media, namely four external hard drives and 18 thumb drives. We are having them processed and will let you know when we have them in a form that can be shared, as well as the cost of sharing under Rule 45.

Regards,
Stanton

From: Strach, Phillip J. [<mailto:phil.strach@ogletree.com>]
Sent: Tuesday, March 26, 2019 9:54 AM
To: Jones, Stanton; Brennan, Stephanie; McKnight, Michael D.; Braden, E. Mark; Raile, Richard; Majmundar, Amar; Riggins, Alyssa; Stanley, Trevor M.; John Branch; dworrell@shanahanmcdougal.com; Nate Pencook; Cox, Paul
Cc: Eddie Speas; Mackie, Caroline P.; zzz.External.AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth; Jacobson, Daniel; Gersch, David P.
Subject: RE: Common Cause v. Lewis -- notice of subpoena compliance

Stanton:

Thanks for this notice. Please send us a copy of the materials received today.

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 | www.ogletree.com | [Bio](#)

From: Jones, Stanton <Stanton.Jones@arnoldporter.com>
Sent: Wednesday, March 20, 2019 9:12 PM
To: Brennan, Stephanie <Sbrennan@ncdoj.gov>; McKnight, Michael D. <Michael.McKnight@ogletreedeakins.com>; Strach, Phillip J. <Phil.Strach@ogletreedeakins.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Riggins, Alyssa <Alyssa.Riggins@ogletreedeakins.com>; Stanley, Trevor M. <tstanley@bakerlaw.com>; John Branch <JBranch@shanahanmcdougal.com>; dworrell@shanahanmcdougal.com; Nate Pencook <NPencook@shanahanmcdougal.com>; Cox, Paul <pcox@ncdoj.gov>
Cc: Eddie Speas <espeas@poynerspruill.com>; Mackie, Caroline P. <CMackie@poynerspruill.com>; AKhanna@perkinscoie.com; melias@perkinscoie.com; Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>; Jacobson, Daniel <Daniel.Jacobson@arnoldporter.com>; Gersch, David P. <David.Gersch@arnoldporter.com>
Subject: Common Cause v. Lewis -- notice of subpoena compliance

Counsel:

Pursuant to N.C. R. Civ. P. 45, I write to give notice that we recently received materials in compliance with our February 13 subpoena to Stephanie Hofeller Lizon.

Regards,
Stanton

R. Stanton Jones
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