

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

LATASHA HOLLOWAY	)	
and GEORGIA ALLEN,	)	
	)	
Plaintiffs,	)	
	)	Case No.: <u>2:18-cv-00069</u>
v.	)	
	)	
CITY OF VIRGINIA BEACH, et al.,	)	
	)	
Defendants.	)	

**RESPONSE TO DEFENDANTS’ MOTION TO QUASH**

On August 27, 2020, Plaintiffs were to depose the first of three witnesses identified by Defendants pursuant to the Parties’ negotiated joint proposed order, Dkt. 171, and the resulting court order, Dkt. 172. Given the compressed schedule set forth in the order, the parties scheduled the depositions to occur only seven and eight days after Defendants identified the witnesses. Plaintiffs served subpoenas on each witness the day before their scheduled depositions, including a subpoena for documents related to their prospective testimony.

On the day of the first scheduled deposition, approximately 20 minutes before the deposition was scheduled to begin at 2 p.m., Defendants’ counsel (Katherine McKnight) notified Plaintiffs’ counsel by email that Defendants would “file a Motion to Quash the subpoenas duces tecum if Plaintiffs do not agree to withdraw them.” Exhibit A. Defense counsel further advised that “[i]f we do not have a withdrawal from plaintiffs’ counsel by 2pm, we will file our Motion to Quash and alert the witnesses.” Defendants argued that the subpoenas duces tecum were outside the discovery period, a remarkable claim given that Defendants had not identified the witnesses until well after discovery had closed.

Plaintiffs' counsel advised Defendants' counsel at 1:57 p.m. that we could fully address the subpoena issue without wasting the Court's time with a Motion to Quash the subpoenas. Plaintiffs' counsel suggested that the deposition proceed at 2 p.m., and Plaintiffs' counsel could ask the deponents "if there are any responsive documents so that we know if there even is a live dispute as to their provision. We are happy to proceed with the depositions but to continue the discussion of the disputed documents (if there are any) with you following the depositions." In Plaintiffs' view, it made no sense to litigate the issue without knowing whether there was an issue to litigate.

Nevertheless, Defendants' counsel filed the Motion to Quash Subpoenas, Dkt. 175, at 2:11 p.m., during the first deposition.

The three depositions nevertheless proceeded on August 27 and 28, 2020. Plaintiffs asked each deponent about the documents requested in the subpoenas, and none of the deponents possessed any responsive documents of interest to Plaintiffs. There is thus no live dispute.

Defendants have now advised Plaintiffs that they are prepared to withdraw their unnecessary Motion to Quash, but have not yet done so. Therefore, Plaintiffs file this response. Because there are no outstanding disputes as to responsive documents, Plaintiffs respectfully request that the Court deny Defendants' Motion to Quash Subpoenas as moot.

Respectfully submitted,

/s/ J. Gerald Hebert  
State Bar No. 38432  
J. Gerald Hebert  
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Danielle M. Lang  
Erin Chlopak  
Christopher Lamar\*

Simone Leeper\*^  
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/s/ Ruth M. Greenwood  
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*Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September, 2020, I electronically filed the foregoing with the Clerk of Court using CM/ECF system.

/s/ J. Gerald Hebert  
J. Gerald Hebert  
State Bar No. 38432  
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Washington, DC 20005  
(202) 822-1854

# **EXHIBIT A**

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**From:** McKnight, Katherine L.  
**Sent:** Monday, August 31, 2020 9:29 AM  
**To:** Ruth Greenwood; Annabelle Harless; Christopher S. Boynton  
**Cc:** Rob Weiner; Gerry Hebert; Gerald L. Harris; Joseph M. Kurt; Christopher Lamar; Danielle Lang; Simone Leeper  
**Subject:** RE: Holloway and Allen v. City et. al - Motion to Quash

Dear Ruth,

We wanted to pick up the following discussion now that all depositions have concluded and Plaintiffs have a sense of what documents might be at issue. Do Plaintiffs still intend to pursue these subpoenas duces tecum? If not, we can notify the Court and withdraw our Motion to Quash.

Thanks very much,

Kate

**Katherine L. McKnight**  
Partner

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**From:** Ruth Greenwood <[rgreenwood@campaignlegalcenter.org](mailto:rgreenwood@campaignlegalcenter.org)>  
**Sent:** Thursday, August 27, 2020 1:57 PM  
**To:** McKnight, Katherine L. <[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)>; Annabelle Harless <[aharless@campaignlegalcenter.org](mailto:aharless@campaignlegalcenter.org)>; Christopher S. Boynton <[CBoynton@vbgov.com](mailto:CBoynton@vbgov.com)>  
**Cc:** Rob Weiner <[RWeiner@campaignlegalcenter.org](mailto:RWeiner@campaignlegalcenter.org)>; Gerry Hebert <[ghebert@campaignlegalcenter.org](mailto:ghebert@campaignlegalcenter.org)>; Gerald L. Harris <[GLHarris@vbgov.com](mailto:GLHarris@vbgov.com)>; Joseph M. Kurt <[jKurt@vbgov.com](mailto:jKurt@vbgov.com)>; Christopher Lamar <[CLamar@campaignlegalcenter.org](mailto:CLamar@campaignlegalcenter.org)>; Danielle Lang <[dlang@campaignlegalcenter.org](mailto:dlang@campaignlegalcenter.org)>; Simone Leeper <[SLeeper@campaignlegalcenter.org](mailto:SLeeper@campaignlegalcenter.org)>  
**Subject:** Re: Holloway and Allen v. City et. al - Motion to Quash

Kate

We are not willing withdraw the subpoenas duces tecum at this time, but are intending to proceed with the depositions today and tomorrow and plan to work out the provision of documents pursuant to the subpoenas with the witnesses. We note that we will ask them if there are any responsive documents so that we know if there even is a live dispute as to their provision.

We are happy to proceed with the depositions but to continue the discussion of the disputed documents (if there are any) with you following the depositions.

How about we discuss this on the 2pm scheduled zoom?

Ruth

**Ruth Greenwood**

Co-Director, Voting Rights & Redistricting  
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**From:** "McKnight, Katherine L." <[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)>  
**Date:** Thursday, August 27, 2020 at 1:37 PM  
**To:** Annabelle Harless <[aharless@campaignlegalcenter.org](mailto:aharless@campaignlegalcenter.org)>, "Christopher S. Boynton" <[CBoynton@vbgov.com](mailto:CBoynton@vbgov.com)>  
**Cc:** Rob Weiner <[RWeiner@campaignlegalcenter.org](mailto:RWeiner@campaignlegalcenter.org)>, Gerry Hebert <[ghebert@campaignlegalcenter.org](mailto:ghebert@campaignlegalcenter.org)>, "Gerald L. Harris" <[GLHarris@vbgov.com](mailto:GLHarris@vbgov.com)>, "Joseph M. Kurt" <[JKurt@vbgov.com](mailto:JKurt@vbgov.com)>, Christopher Lamar <[CLamar@campaignlegalcenter.org](mailto:CLamar@campaignlegalcenter.org)>, Ruth Greenwood <[rgreenwood@campaignlegalcenter.org](mailto:rgreenwood@campaignlegalcenter.org)>, Danielle Lang <[dlang@campaignlegalcenter.org](mailto:dlang@campaignlegalcenter.org)>, Simone Leeper <[SLeeper@campaignlegalcenter.org](mailto:SLeeper@campaignlegalcenter.org)>  
**Subject:** Holloway and Allen v. City el. al - Motion to Quash

Dear Ms. Harless,

Defendants' counsel is preparing to join Plaintiffs' counsel for the three depositions scheduled pursuant to the Parties' negotiated joint proposed order, Dkt. 171, and the resulting court order, Dkt. 172.

However, we intend to file a Motion to Quash the subpoenas duces tecum if Plaintiffs do not agree to withdraw them. Plaintiffs only have leave to conduct depositions, not to serve new, additional discovery one year after discovery closed. Dkt. 172 at 1. Moreover, these subpoenas plainly do not provide sufficient time to respond giving the witnesses just hours to gather documents. Rule 45 is clear that this kind of subpoena "must" be quashed. Fed. R. Civ. P. 45 (d)(3)(A).

Do Plaintiffs agree to withdraw these subpoenas duces tecum?

If we do not have a withdrawal from Plaintiffs' counsel by 2pm, we will file our Motion to Quash and alert the witnesses.

Thank you,

Kate

**Katherine L. McKnight**  
Partner

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**From:** Annabelle Harless <[aharless@campaignlegalcenter.org](mailto:aharless@campaignlegalcenter.org)>  
**Sent:** Wednesday, August 26, 2020 5:36 PM  
**To:** Christopher S. Boynton <[CBoynton@vbgov.com](mailto:CBoynton@vbgov.com)>  
**Cc:** Rob Weiner <[RWeiner@campaignlegalcenter.org](mailto:RWeiner@campaignlegalcenter.org)>; Gerry Hebert <[ghebert@campaignlegalcenter.org](mailto:ghebert@campaignlegalcenter.org)>; Gerald L. Harris <[GLHarris@vbgov.com](mailto:GLHarris@vbgov.com)>; Joseph M. Kurt <[jKurt@vbgov.com](mailto:jKurt@vbgov.com)>; McKnight, Katherine L. <[kmcknight@bakerlaw.com](mailto:kmcknight@bakerlaw.com)>; Christopher Lamar <[CLamar@campaignlegalcenter.org](mailto:CLamar@campaignlegalcenter.org)>; Ruth Greenwood <[rgreenwood@campaignlegalcenter.org](mailto:rgreenwood@campaignlegalcenter.org)>; Danielle Lang <[dlang@campaignlegalcenter.org](mailto:dlang@campaignlegalcenter.org)>; Simone Leeper <[SLEEPER@campaignlegalcenter.org](mailto:SLEEPER@campaignlegalcenter.org)>  
**Subject:** Re: Holloway and Allen v. City el. al - Designation of 3 additional witnesses

[External Email: Use caution when clicking on links or opening attachments.]

Counsel,

We will serve the witnesses personally. Attached is a notice of deposition as well as the subpoenas being served.

Annabelle

**Annabelle Harless**  
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