STATE OF NORTH CAROLINA

WAKE COUNTY

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.**

SUPPLEMENTAL MEMORANDUM AND AFFIDAVIT IN SUPPORT OF GEOGRAPHIC STRATEGIES' RESPONSE TO COURT ORDER OF 11/4/2019

Geographic Strategies, LLC ("Strategies") submits this memorandum and affidavit in response to this Court's November 4, 2019 Order ("November Order") granting Strategies the opportunity to (1) further support the Confidentiality designations with respect to 135,724 files from the so-called "Hofeller Files" for which the Court has not made a final confidentiality determination; and (2) identify whether an additional 34,666 files from Texas, Ohio, and Florida were created on behalf of Strategies. Submitted herewith is a supplemental itemization log and a supplemental affidavit from Dalton Lamar Oldham, Esq. ("Supplemental Oldham Affidavit") evidencing the factual basis of these claims.

## Introduction

Nearly a terabyte of Strategies' business documents was taken without authorization or notice from its computers—which were in the possession of one of its founding principals, Dr. Thomas Hofeller, when he passed away—and produced in this litigation to Strategies' business and political competitors. Following the directions of this Court at substantial cost, Strategies has

spent the past six months defending its proprietary and privileged Confidential property, seeking to designate it under the Court's blanket Protective Order. Such a designation would have no effect on this case—the trial occurred months ago, and the files remaining at issue have nothing to do with the State of North Carolina.

The three-judge panel initially designated the entirety of the Hofeller Files "Confidential" for a period of sixty days. 7/12/2019 Order on Strategies' Mot. ("July Order") at 3. During that sixty-day period, Strategies had ***forty-five days*** to review the terabyte of data and make claims of "***ownership*** or other claims of right" on a file-by-file basis. *Id.* (emphasis added). Strategies invested substantial time and resources, and consistent with the Court's direction in its July Order, Strategies produced two detailed logs and two detailed affidavits demonstrating that 268,848 files were stored on Strategies' computers and/or used for Strategies' redistricting work. Through unrebutted evidence, Strategies demonstrated all the July Order required, *i.e.*, those files were ***owned*** by Strategies. Although it was ***not required by the July Order***, Strategies also identified documents that were attorney-client privileged, attorney work product, trade secrets, or subject to First Amendment privilege.

In Strategies' view, the evidence previously produced, if examined, would be sufficient to resolve any issues with respect to the 135,724 files that this Court asked Strategies to log again in its November Order. Strategies lacked the time and the resources to re-review those files and re-log them with additional, detailed information in the allotted time period. The November Order adds additional requirements which the July Order did not contain. The July Order expressly required that Strategies only establish ownership of the files, as Strategies did with its initial unrebutted affidavits and logs. In other words, Strategies did exactly what this Cout asked it to do. By now requiring Strategies to log the 135,724 files for "privilege" and "attorney work

product," the November Order imposes a burden on Strategies that this Court did not originally impose and that Strategies simply could not satisfy in thirty days. *See France v. France*, 224 N.C. App. 570, 578 (2012) ("It is well established that one trial court judge may not overrule another trial court judge's conclusions of law when the same issue is involved [;] [n]o appeal lies from one Superior Court judge to another; . . . one Superior Court judge may not correct another's errors of law; and . . . ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action.") (internal quotation marks omitted).

Importantly, it is not clear what standard the Court applied in the November Order to the post-trial, unused discovery at issue here. The Court appears to be treating the documents as if they are going to be used in trial. But they are not. And while there is no controlling North Carolina law on how to treat such unused discovery, the Protective Order ***issued by this Court*** explains exactly how such documents should be handled when, as here, they involve confidential and/or proprietary business material—they should be destroyed and/or returned to the party that owns the material. By contrast, the November Order appears to require that a company whose confidential and proprietary documents are produced in a litigation must establish that those documents are ***privileged*** or ***trade secrets*** in order to prevent them from becoming available for public consumption, regardless of whether they are relevant to the case. Such a result directly contradicts the policies embodied in the rules of civil procedure that discovery should be broad and parties should be forthcoming. *See generally Longman v. Food Lion, Inc.*, 186 F.R.D. 331, 333 (M.D.N.C. 1999) (declining to modify an agreed upon "blanket protective order" in part because such orders are "essential to the efficient functioning of the discovery process"). At the very least, as amici the New York Times and Associated Press argue, protection should be available where, as here, the party demonstrates good cause. NYT and AP Br. at 5-7 (Sept. 13,

2019). And even if a higher standard did apply, the Court has failed to address the First Amendment privilege that the three-judge panel applied to the North Carolina Democratic Party's documents earlier in this case.

In a good-faith effort to comply with the Court's request, Strategies submits herewith an additional, more detailed log ("Log 3") and the Supplemental Oldham Affidavit seeking to protect a smaller subset of confidential and proprietary documents that are either privileged or constitute trade secrets. These documents are "Confidential" under the Protective Order, constitute attorney work product, are Strategies' trade secrets, and are subject to First Amendment privilege. Indeed, in Log 3, Strategies has focused on highly confidential documents which are clearly protected by privilege—legal advice on redistricting and internal RNC communications. In doing so, Strategies is not limiting its prior unrebutted evidence of ownership and privilege, which is supported by the following:

1. All of the Hofeller Files were reviewed by North Carolina lawyers and law school graduates to determine the terms of ownership and privilege, which required an expenditure of over $200,000;
2. Strategies has provided the court with the written retainer agreement between Mr. Oldham, Dr. Hofeller, Strategies, and the RNC, which outlines the ownership and privilege status of the documents to be created out of this relationship, Oldham Aff. ¶¶ 7-10 & Ex. 1;
3. Strategies supplied the Court with an initial affidavit from Mr. Oldham to justify its claims of ownership and privilege, *see generally id.*; and

4. On August 30, Strategies offered to provide the Court with access to the documents it had logged, and following the Court's request in the November Order, promptly did so.

These items are consistent with North Carolina appellate law discussing evidence a party must supply for a court to rule on the privilege issues. *See Sessions v. Sloane*, 789 S.E. 2d 844 (N.C. Ct. App. 2016). As a result, Log 3 is somewhat superfluous, particularly in a case where opposing counsel has the documents already and the ability to contest individual documents should they choose to do so.

Finally, the overwhelming majority of the 34,666 files from Texas, Ohio, and Florida—including all of the Ohio and Florida files—were created on behalf of Strategies as explained in the Supplemental Oldham Affidavit submitted herewith and should remain "Confidential" as well.

## Legal Argument

### I. The Court Should Designate as "Confidential" the Entirety of the 135,724 Documents Still at Issue.

The July Order gave Strategies access to the Hofeller Files for the first time and allowed it to determine which of those files belong to Strategies. The Court specifically ordered Strategies to provide "an itemization of all files in which Geographic Strategies ***claims ownership*** or other claim of right and contends ought to continue to be treated as confidential." July Order at 4 (emphasis added). The Court further specified that the "itemization shall contain the name of the file, the nature of the file, and the basis for the ***claim of ownership***." *Id.* (emphasis added).

With respect to at least the 135,724 files still at issue, the affidavits and logs submitted by Strategies on August 30, 2019 plainly comply with that order. All of those files were located in the possession of its now deceased founder. Nearly all of those files came from Strategies' computers, as evidenced by the names of the files and the file paths identified in the logs. That

alone establishes Strategies' "ownership," particularly as the claim is unrebutted. Moreover, the document descriptions, combined with the description of Strategies' work corroborated in the unrebutted Oldham Affidavit, demonstrate that these files were created for Strategies' primary clients—including pursuant to Strategies' contract with the Republican National Committee ("RNC")—and related to Strategies' core work, legislative redistricting. In responding to Strategies' filings, Plaintiffs disputed none of these facts, and it cannot be seriously questioned that these files belong to Strategies.

That should have been the end of the matter. The July Order did not require Strategies to submit a privilege log or establish the existence of trade secrets. Indeed, the July Order did not even require Strategies to explain why the files met the very low bar for confidentiality established in the Protective Order. Instead, the Court simply required Strategies to demonstrate ownership with the clear understanding that Strategies' internal business files—which everyone has conceded are irrelevant to this case—could be safely marked "Confidential" so as not to cause irreparable harm to Strategies.

As explained in Strategies' August 30 brief, many of the files also constitute attorney work product or Strategies' trade secrets, or are otherwise subject to attorney-client or First Amendment privilege. And Strategies identified those files in its logs. But as Strategies expressly explained in its brief, ***it was not required to log for privilege or trade secrets***. Strategies did so simply to demonstrate to the Court the sensitivity of those files and avoid (spurious) arguments by Plaintiffs that Strategies had somehow waived privilege.

Strategies does not read the July Order to require a full privilege log. The Court was acutely aware of the massive amount of files at issue. It could not have reasonably believed that Strategies would be able to review every one of those files and provide detailed privilege or confidentiality

logs in just ***forty five days***. Moreover, the sole purpose of a privilege log is to give an opposing party the ability to asses a claim of privilege when the party cannot review the documents subject to the claim—a purpose wholly irrelevant when Plaintiffs and the Court ***already possess every one of the documents identified on Strategies' logs***. N.C. R. Civ. P. 26(b)(5)(a) ("When a party ***withholds information*** otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, 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." (emphasis added)). By contrast, the purpose of the July Order was for Strategies to make claims of ownership to establish confidentiality under the Protective Order.

At the end of the day, the July Order represented a reasonable compromise to avoid months and months of detailed review and logging of irrelevant files while still requiring Strategies to demonstrate that the files at issue did, in fact, belong to Strategies. Strategies easily met that burden, and the files should have been marked "Confidential."

In the November Order, the Court requires much more of Strategies. That order states that the 135,724 files "[l]ack[] [s]ubstantiation of ***[l]egitimate [p]rivilege or [c]onfidentiality [i]nterest***." *Id.* at 5 (emphasis). The November Order then goes on to state that "Geographic Strategies, for example, asserts that 251,295 files in Log 1 are 'Attorney Work Product' but does not explain further how any of these files satisfy the requirements for invoking this privilege." *Id.* at 6. But the July Order required no such thing.

For these reasons, the Court should designate all of the 135,724 files as "Confidential" consistent with the July Order. In just thirty days, Strategies could not possibly re-review the

135,724 files and submit a full privilege log as the November Order requires. Further, the November Order is not clear as to what information would satisfy the Court that the documents should be designated "Confidential." Consistent with the July Order, Strategies demonstrated in its August 30 filings that it owns the 135,724 documents still at issue. That should be enough here to obtain a "Confidentiality" designation for those documents.

## II. The Court Should Designate as Confidential the Documents Identified in Log 3.

The Court should at least designate the documents identified in Log 3 as "Confidential." Those documents fall into two main categories: (A) internal RNC redistricting strategy binders ("RNC Redistricting Strategy Binders") (Log 3, identified as "Trade Secret" in Column L), and (B) internal RNC communications (Log 3, identified as "First Amendment Privilege" in Column K). All of these documents are "Confidential" under the Protective Order and privileged, and the documents comprising the RNC Redistricting Strategy Binders further constitute Strategies' trade secrets.

### A. RNC Redistricting Strategy Binders

The RNC Redistricting Strategy Binders plainly constitute Strategies' confidential, privileged, and proprietary information. Again, the RNC was Strategies' main client. Oldham Aff. ¶¶ 7-10. The binders were developed by RNC counsel in conjunction with Strategies and its principals to prepare for redistricting litigation. Supp. Oldham Aff. ¶¶ 2-3. Indeed, the files are marked "attorney work product." *Id.* ¶ 4. And they expressly state that they contain materials authored by "redistricting experts"—*i.e.*, Strategies and its principals. *Id.*

These strategic documents were then shared at a conference with Republican counsel from around the country to assist with the RNC's national redistricting strategy, with the following caveat:

> [I]t is acknowledged that this conference and materials are of considerable and

> unique value and are not available on the open market. The Conference and these materials have been provided to you in the mutual understanding that by accepting theses materials and attending this Conference you are in return obligating yourself to adhere to the provisions stated [herein] as well as not to represent or assist any interest adverse to the [RNC] or its state or local affiliates in any apportionment or redistricting matter.

*Id.* ¶¶ 5-6. The materials expressly state that they were being provided with the "expectation that we will be jointly involved in future litigation." *Id.* ¶ 7.[1] To the extent parts of the binders were originally drafted by Strategies' principals prior to the formation of Strategies, Strategies maintained possession of them because it regularly used and supplemented them in its work for the RNC. *Id.* ¶ 8.

In order to protect their confidentiality, Strategies will not describe the files within the RNC Redistricting Strategy Binders in detail here. The Court now has access to Strategies' files, and Strategies encourages the Court to review these files to get a full understanding and appreciation for their sensitivity. But to be clear, these documents together constitute the RNC's redistricting "Bible." *Id.* ¶ 9. The binders reflect legal analysis of the current redistricting law for each redistricting cycle, as well as the RNC's redistricting strategy for each cycle in anticipation of litigation over the redistricting plans, and they contain the core of the RNC's redistricting methods and strategies over the last two decades. *Id.* ¶ 10. RNC attorneys developed the documents in close consultation with Strategies and its principals, relying heavily on their expertise and proprietary methods of analysis with respect to redistricting. *Id.* ¶ 11. Both Strategies and the RNC took substantial measures to ensure that these documents would be kept confidential, and they would never have fallen into the hands of those with an adverse political interest or been

[1] The language quoted herein appeared in a cover page to the physical copies of the binders. The cover page was not located within the Hofeller Files, but it was included in the front of printed copies of the binders.

released for broad public consumption had they not been stolen by Ms. Hofeller. *Id.* ¶ 12.

As a result, there can be little doubt that these files are at least "Confidential" under the Protective Order. That order defines "Confidential Information" as "confidential, non-public trade secrets, competitively sensitive or proprietary information, research and analysis, development or commercial information, or other information for which a good-faith claim of need of protection from disclosure can be made." Protective Order ¶ 2. The RNC Redistricting Strategy Binders fall within ***every single one*** of these categories.

Not only are the binders "Confidential" under the Protective Order, they meet the statutory definition of a trade secret under the North Carolina Trade Secrets Act. That statute defines a "trade secret" as:

> business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that: a. [d]erives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and b. [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.C.G.S. § 66-152. The RNC Redistricting Strategy Binders constitute a "compilation of information" that includes Strategies' "methods" and "techniques" with respect to redistricting that were developed by Strategies and its principals in conjunction with the RNC. Supp. Oldham Aff. ¶ 13. The documents derive substantial value from being kept secret, especially from Strategies' political opponents. *Id.* ¶ 14. And Strategies took substantial efforts to maintain their secrecy. *Id.* ¶ 12.

The RNC Redistricting Strategy Binders also constitute attorney work product. North Carolina defines "attorney work product" as materials prepared at the direction of an attorney in anticipation of litigation. *See Crosmun v. Trustees of Fayetteville Tech. Cmty. Coll.*, 832 S.E.2d

223, 236 (N.C. Ct. App. 2019). The RNC Redistricting Strategy Binders are labeled "attorney work product" and expressly state that they were developed by counsel, in conjunction with their consultants, in anticipation of redistricting litigation. Supp. Oldham Aff. ¶¶ 3-4. Indeed, there can be no doubt that Strategies and the RNC expected redistricting litigation at the beginning of each census cycle. And Strategies and the RNC did not waive the privilege by sharing their attorney work product with other counsel defending RNC interests throughout the country and seeking to promote the RNC redistricting agenda. *See, e.g.*, *Sessions*, 789 S.E. 2d at 854–55.

Finally, and perhaps most importantly, the RNC Redistricting Strategy Binders are entitled to First Amendment privilege. "A party who objects to a discovery request as an infringement of the party's First Amendment rights is in essence asserting a First Amendment *privilege*." *Perry v. Schwarzenegger*, 591 F.3d 1126, 1140 (9th Cir. 2009) (citing, *inter alia*, *Black Panther Party v. Smith,* 661 F.2d 1243, 1264 (D.C. Cir. 1981)); *see also N.C. Right to Life, Inc. v. Leake*, No. 5:99-CV-798-BO(3), 2000 WL 36741022, at *3 (E.D.N.C. Sept. 11, 2000) (citation omitted) ("Although there are relatively few cases applying a First Amendment privilege to discovery disputes, it is settled that such a privilege exists." (internal quotation marks and citations omitted)). And that privilege applies even where all litigants are private parties. *Perry*, 591 F.3d at 1140 n.5 (quoting *Grandbouche v. Clancy,* 825 F.2d 1463, 1466 (10th Cir. 1987)) ("This privilege applies to discovery orders 'even if all of the litigants are private entities.'").

Courts applying the privilege have typically utilized a two-part framework. First, the party asserting the privilege must make "a prima facie showing of arguable first amendment [sic] infringement." Second, the party seeking the information must "demonstrate an interest in obtaining the disclosures it seeks which is sufficient to justify the deterrent effect on the free exercise of the constitutionally protected right of association." *Id.* at 1140 (internal quotation

marks and citation omitted). A party makes a prima facie showing of First Amendment infringement when it demonstrates that "enforcement of the discovery requests" will have a chilling effect on associational rights. *Id.*

Applying this framework here, the First Amendment privilege plainly applies. *First*, production of the binders would necessarily chill the First Amendment rights of Strategies and the RNC. In *Democratic National Committee v. Arizona Secretary of State's Office* ("*DNC v. Arizona*"), the District of Arizona "ha[d] no trouble concluding that Plaintiffs" established the first prong of the First Amendment Privilege with respect to "documents [that] provide[d] a detailed account of [the Arizona Democratic Party]'s election monitoring activities, including the location of precincts that it was targeting, the types of issues that it found most concerning, and its strategies in responding to incidents reported, including legal strategies" and "communications with strategic partners regarding strategy and analysis of voter demographics and likely voting behavior." 2017 WL 3149914, at *2 (D. Ariz. July 25, 2017) (internal quotations and citations omitted).

Likewise, Strategies and the RNC "would suffer significant prejudice if [its] internal planning materials were disclosed to its political opponents[.]" *Id.* Indeed, the RNC Redistricting Strategy Binders are at the heart of the associational rights protected by the First Amendment. *Cf. Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989) (recognizing that the government may not "interfere with a [political] party's internal affairs," absent "a compelling state interest"). Just as in *DNC v. Arizona*, disclosure of these documents would reveal a major political party's internal, proprietary, and highly confidential communications and strategy. Thus, like the *DNC v. Arizona* documents, disclosure would chill the RNC's and Strategies' associational rights by (1) "chill[ing] [strategic] partners from associating with the [RNC] in the future;" (2) "requir[ing] [the RNC] to change the way that it operates and communicates going forward" in

response to this newly unearthed information; and (3) "inhibit[ing] the free exchange of ideas that is necessary for [the RNC] to pursue its goals." No. CV-16-01065-PHX-DLR, 2017 WL 3149914, at *2.

*Second*, there is no credible argument here that disclosure is "carefully tailored to avoid unnecessary interference with protected activities ." *Perry*, 591 F.3d at 1141. Trial occurred months ago, and ***the RNC Redistricting Strategy Binders had no relevance to the case***. In other words, Plaintiffs ***do not need these documents***. And because this disclosure will have no "substantial bearing" on "the merits," Plaintiffs cannot show ***any*** "justification for the deterrent effect on the free enjoyment of the right to associate which disclosure . . . is likely to have." *NAACP v. Alabama*, 357 U.S. 449, 464–66 (1958); *see also Ohio Org. Collaborative v. Husted*, 2015 WL 7008530, at *4 (S.D. Ohio Nov. 12, 2015) (refusing to order discovery of information that was not "highly relevant to either the issue of standing or the merits of plaintiffs' claims" and that went "far beyond the reasonable needs of defendants"); *Perry*, 591 F.3d at 1141 (explaining that second prong of First Amendment privilege examines "the centrality of the information sought to the issues in the case").

Finally, it is important to note that this Court has already recognized a First Amendment privilege in this case. ***Plaintiffs*** argued previously that turning over analytics regarding voting data and related work product from the Democratic Party "would have a chilling effect on plaintiffs' freedom of association by adversely impacting their ability to organize, promote their message(s), and conduct their affairs." Plaintiff North Carolina Democratic Party's Opposition to Legislative Defendants' Motion to Compel Production of Documents from N.C. Democratic Party at 12 (internal quotations omitted) (quoting *Husted*, 2015 WL 7008530, at *2). In response, this Court required *in camera* review of the documents at issue in Plaintiffs' motion because "Plaintiff

NCDP . . . squarely placed its associational rights at issue in this litigation." Order on Legislative Defendants' Motion to Compel Production of Documents from Plaintiff North Carolina Democratic Party at 7. More importantly, this Court then held that, regardless of discoverability, that information was to "be designated by Plaintiff NCDP as 'HIGHLY CONFIDENTIAL/ OUTSIDE ATTORNEYS EYES ONLY' pursuant to the parties' April 5, 2019, Consent Protective Order, prior to production." *Id.* at 10–11. In other words, the Court has already granted the precise relief requested by Strategies for materially indistinguishable information owned by Plaintiffs. That ruling is law of the case, and the Court should take the same approach here with respect to the RNC Redistricting Strategy Binders.

**B. Internal RNC Communications**

The remainder of the documents identified in Log 3 constitute internal communications with the RNC regarding RNC business and strategy that Dr. Hofeller had on behalf of Strategies and pursuant to Strategies' contract with the RNC. Supp. Oldham Aff. ¶ 15. While the basis for confidentiality and privilege varies from document to document and is identified in the log, such communications as a group plainly constitute "Confidential Information" under the Protective Order, as they include "competitively sensitive or proprietary information" and/or "other information for which a good faith claim of need of protection from disclosure can be made." Protective Order ¶ 2. Indeed, even if this Court has any doubt about confidentiality—and it should not—it should err on the side of designating the documents given their complete irrelevance to this case and their indisputable importance to Strategies and its main client, the RNC. Moreover, many of the communications involve attorneys and are either protected by the attorney-client privilege or constitute work product. *See generally* Log 3.

Finally, these internal communications involving one of the country's two major political

parties are plainly privileged under the First Amendment. The communications involve candid conversations between RNC leadership, RNC attorneys, RNC members, and their key redistricting consultants regarding redistricting efforts and litigation. Such communications go to the heart of RNC political strategy.

Thus, publicly disclosing such communications would necessarily chill political speech within the organization. *See, e.g., Perry*, 591 F.3d at 1141 (court had "little difficulty concluding that disclosure of internal campaign communications" can "have a deterrent effect on the exercise of protected activities" by inhibiting "the free flow of information within campaigns"); *Husted*, 2015 WL 7008530, at *3 ("To require the Democratic Party to make further substantive response to the challenged requests would require the disclosure of a wealth of financial, donor, membership, and strategic information – information that goes far beyond the issue of standing or even the merits of this action. The Court has no doubt that the compelled disclosure of such sensitive information in the context of highly charged litigation involving issues of great political controversy would have a chilling effect on plaintiffs' freedom of association by adversely impacting their ability to organize, promote their message(s), and conduct their affairs."); *see also DeGregory v. Attorney Gen. of State of N.H.*, 383 U.S. 825, 827 (1966) (invoking First Amendment to reverse contempt conviction where member of the Communist Party refused to divulge information regarding his past association with the party). And again, there is ***no basis whatsoever*** to disclose the documents here, as ***they have no relevance to this case***. Therefore, all of the internal RNC communications identified on Log 3 should also be marked "Confidential."

## III. The Overwhelming Majority of the 34,666 Files from Texas, Ohio, and Florida—Including All of the Files from Ohio and Florida—Were Created on Behalf of Strategies.

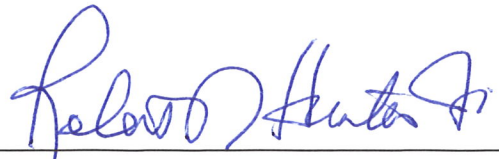
Finally, the overwhelming majority of the 34,666 files from Texas, Ohio, and Florida were

created on behalf of Strategies. Supp. Oldham Aff. ¶ 16. As an initial matter, all of the files from Ohio and Florida were created on behalf of Strategies. In those states, neither Dale Oldham nor Dr. Hofeller had an independent contract. *Id.* ¶ 17. All work on redistricting efforts in those states was performed pursuant to Strategies' contract with the RNC. *Id.* The same is true of the work performed for redistricting in Texas prior to April 2017 (with the exception of files previously noted). *See id.* ¶ 18. After that time, Dr. Hofeller may have signed an independent contract with another entity in Texas. *Id.*

As a result, Strategies plainly owns these files. And while it is unclear what this means under the November Order—which requires only "sufficient information indicating whether the . . . files reflect work performed on behalf of Geographic Strategies"—under the July Order, they should be designated "Confidential." Strategies performed this work on behalf of its main client, the RNC, and there is no basis whatsoever to publicize the files, which have no relevance to this now-concluded litigation.[2]

[2] Strategies' claims of confidentiality and privilege extend to any duplicates of documents described herein. Those duplicates were previously logged and submitted to the Court and opposing counsel on September 1, 2019.

Dated: December 4, 2019



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I hereby certify that I have this day served the foregoing upon all parties to this matter by emailing counsel as per the Case Management Order as follows:

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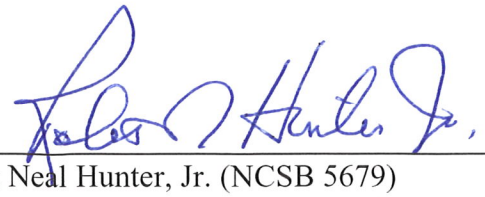

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