

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

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WAKE COUNTY, C.S.C.

IN THE GENERAL COURT OF
JUSTICE SUPERIOR COURT DIVISION

NO. 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.

BY



**MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF BY
MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL
FUND AND ASIAN AMERICANS
ADVANCING JUSTICE | AAJC**

The Mexican American Legal Defense and Educational Fund ("MALDEF") and Asian Americans Advancing Justice | AAJC ("Advancing Justice-AAJC") respectfully move this Court for leave to file the attached *amicus curiae* brief in support of Plaintiffs. In support of this motion, MALDEF and AAJC submit the following:

1. MALDEF is the nation's leading Latino legal civil rights organization that promotes social change through advocacy, communications, community education, and litigation. With our over fifty-year history, MALDEF has made significant contributions in securing the rights for Latinos in the areas of education, employment, immigrant rights, and political access at both the state and federal levels.

2. Advancing Justice-AAJC is the voice for the Asian American community—the fastest-growing population in the U.S.—fighting for civil rights

through education, litigation, and public policy advocacy. Advancing Justice-AAJC serves to empower Asian American communities by bringing local and national constituencies together and ensuring Asian Americans are able to participate fully in our democracy.

3. MALDEF and Advancing Justice-AAJC have a strong interest in preventing the destruction of any of the Hofeller files. These files are extremely relevant and vital to the interests of MALDEF and Advancing Justice-AAJC's clients in a lawsuit that we intend to file today in federal court.

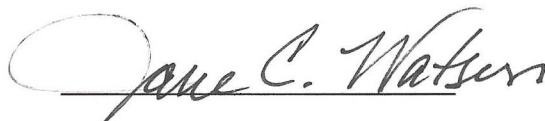
4. If permitted to participate as *amicus curiae*, MALDEF and Advancing Justice-AAJC will document the incurable harm that will come to our clients and other interested parties if the Hofeller documents are destroyed or unnecessarily marked "Highly Confidential."

WHEREFORE, MALDEF and Advancing Justice-AAJC respectfully requests that this Court:

- a. Grant MALDEF and Advancing Justice-AAJC leave to submit the attached *amicus curiae* brief in support of Plaintiffs; and
- b. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

Dated: September 13, 2019

A handwritten signature in cursive script, reading "Jane C. Watson", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below by electronic mail, addressed as follows:

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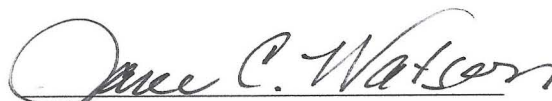
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This the 13th day of September, 2019.


Jane C. Watson

**ATTACHMENT:
PROPOSED AMICUS BRIEF**

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The Mexican American Legal Defense and Educational Fund (“MALDEF”) and Asian Americans Advancing Justice | AAJC (“Advancing Justice-AAJC”) intend to file a complaint today on behalf of individuals and organizations harmed by actions by the Trump Administration, Secretary of Commerce Wilbur L. Ross, the Department of Commerce, Census Bureau Director Steven Dillingham, the Census Bureau, and others to collect citizenship data and provide that data to states who desire to exclude non-citizens from the total population base used for intra-state redistricting. MALDEF and Advancing Justice-AAJC, on behalf of their clients, will seek to enjoin these actions because they violate the Administrative Procedure Act, the Fifth Amendment’s equal protection guarantee, and 42 U.S.C § 1985(3) (conspiracy to interfere with civil rights). We respectfully request that, in the interest of justice, the Court decline to order the destruction of any of the Hofeller files or unnecessarily mark any of these documents “Highly Confidential.”

The Hofeller documents that have thus far been made public are directly relevant to our clients' forthcoming lawsuit.¹ These documents reveal that, as early as 2015, Dr. Thomas Hofeller recommended the addition of a citizenship question to the 2020 Census for use in excluding non-citizens from the population base used for congressional redistricting. If non-citizens were excluded from total population in congressional redistricting, Dr. Hofeller opined, this would lower the number of majority-minority congressional districts, benefitting non-Latino whites to the detriment of Latinos.

There is also a document from the public Hofeller files that shows that Dr. Hofeller drafted a letter that was an early version of a December 2017 letter from the Department of Justice ("DOJ") to the Census Bureau requesting that the Bureau add a citizenship question to the 2020 Census for purposes of enforcing the Voting Rights Act ("VRA"). The Supreme Court in *Department of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019), however, found that Secretary Ross proposed to the DOJ that it make this request of the Census Bureau, and that DOJ did not have any actual interest in better citizenship data. Because Secretary Ross did not provide a reason for adding a citizenship question other than the pretextual VRA rationale, the Supreme Court effectively set aside Secretary Ross's decision to add a citizenship question to the 2020 Census. *Id.* at 2575-76. Because the Supreme Court's decision as a practical matter precluded the addition of a citizenship

¹ Documents filed in *Kravitz v. Department of Commerce*, No. 8:18-cv-01041-GJH (D.Md.), ECF Nos. 162 & 175, explain the Hofeller files' connection to litigation around the addition of a citizenship question to the 2020 Census, and the current continued efforts by defendants in MALDEF and Advancing Justice-AAJC's forthcoming lawsuit to collect and produce citizenship data for discriminatory purposes.

question to the decennial census, the Trump Administration and others moved forward with their discriminatory plan to facilitate the exclusion of non-citizens from the population base used for redistricting, as first recommended by Dr. Hofeller in 2015, but this time doing so by collecting citizenship data from administrative records.

Given the information revealed in the public Hofeller documents and the fact that Dr. Hofeller was a leading Republican demographer, there are likely other non-public materials in the more than 75,000 Hofeller files that are directly relevant to MALDEF and Advancing Justice-AAJC's forthcoming lawsuit, and that are potentially relevant to other future lawsuits that involve redistricting and voting rights issues that Dr. Hofeller's work influenced. For this reason, we respectfully request that the Court deny all requests that these files be destroyed or unnecessarily marked "Highly Confidential." Destruction or denial of access to these important documents would potentially result in continued, irreparable harm to plaintiffs in our forthcoming action.

Respectfully submitted,

Dated: September 13, 2019

A handwritten signature in cursive script that reads "Jane C. Watson". The signature is written in dark ink and is positioned above the printed name and contact information.

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