

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.

**AMICI CURIAE BRIEF OF THE
NEW YORK TIMES COMPANY
AND THE ASSOCIATED PRESS**

The New York Times Company and The Associated Press, by and through the undersigned counsel and pursuant to this court's 11 September 2019 Order Granting Leave to File Amici Curiae Brief, respectfully submit their Amici Curiae Brief with respect to whether Dr. Thomas Hofeller's computer files ("the Files") should be open to public disclosure or designated as confidential. In addition to supporting fully the plaintiffs' arguments in favor of disclosure, *amici* respectfully assert that the public interest weighs heavily in favor of public disclosure, that the Files indisputably contain important information bearing on issues of great national significance, and that the parties seeking to shield them from public view have not met, and cannot meet, their heavy burden of showing any just, proper or necessary cause for the relief they seek.

Introduction

The *amici* and their undersigned counsel have reviewed the public filings in this case that relate to whether and to what extent the interim protective order entered by this court on 12 July 2019 should or should not be extended, modified or dissolved. Among other things, that review revealed that:

- The Files and their disposition are before the court because the plaintiffs obtained them via a subpoena issued to Dr. Hofeller's daughter which neither she nor any other person or party objected to or sought to quash.
- By motion dated 15 June 2019 Geographic Strategies LLC, a non-party, sought leave to intervene for the limited purpose of urging the court to designate all of the Files as "Highly Confidential." Among other things, the motion alleged that Geographic Strategies' owned "confidential and privileged documents" included in the Files.
- By order entered on 12 July 2019 this court, as an interim measure, established a timeline for Geographic Strategies to inspect the Files and assert specific claims of ownership or other rights to any of their contents.
- On 30 August 2019 Geographic Strategies responded to the court's order of 12 July 2019 by filing an itemization, under seal, of the portions of the Files as to which Geographic Strategies claims ownership. In a supporting affidavit that accompanied the sealed itemization report, a senior employee of Consilio LLC described how her firm conducted a

search to identify any Files as to which Geographic Strategies asserts ownership or “other claim of right” because they allegedly “contain trade secrets, attorney-client privilege, work product and other confidential materials.” Affidavit of Amelia F. Blankenship, at ¶ 3.

- On 30 August 2019, the Legislative Defendants also filed sealed itemizations of the portions of the Files which they asserted either the Work Product or Attorney Client Privileges and asked the court to order those portions destroyed.
- On 6 September 2019 *The New Yorker* published, via a Twitter post authored by David Daley, an article entitled “The Secret Files of the Master of Modern Republican Gerrymandering” in which the magazine acknowledged that it had possession of all or significant portions of the Files.
- On 9 September 2019 Geographic Strategies responded to the magazine’s tweet via an “Emergency Motion” in which, among other things, it asked this court to enjoin *The New Yorker*, Mr. Daley, and anyone acting in concert with them, from “using, distributing, or publishing” the contents of the Files.

Argument

This court should deny the motions by Geographic Strategies and the Legislative Defendants to prohibit public disclosure of the Files, whether by ordering their destruction or return, or by enjoining their use and dissemination, because:

- The public interest, which the court must consider when applying Rule 26(c) of the Rules of Civil Procedure, weighs heavily in favor of public disclosure of the Files;
- The Files relate to matters of great importance to the nation and to states other than North Carolina; and,
- Any order purporting to prohibit the use, dissemination or publication of the Files by *The New Yorker* or any other media outlet would constitute a manifestly unconstitutional prior restraint on the press.

A. The Public Interest, Which the Court Must Consider, Weighs Heavily in Favor of Public Disclosure.

Open proceedings and records are hallmarks of the North Carolina judicial system. *See generally* N.C. Gen. Stat. §7A-109 (public has right to inspect court records in criminal and civil proceedings); *see also In re Search Warrants Issued in Connection with the Investigation into the Death of Nancy Cooper*, 200 N.C. App. 180, 683 S.E.2d 418, 2009 N.C. App. LEXIS 1617, 37 Media L. Rep. 2547 (2009) (North Carolina Constitution’s “open courts” provision

creates qualified right of access to search warrants and similar documents in a criminal proceeding).

Although our courts have never specifically held that there is either a common law or First Amendment presumption of public access to *unfiled* civil discovery materials, it nevertheless is well settled that a party or intervenor seeking to keep unfiled civil discovery materials confidential must show that it has met the "good cause" standards set forth in Rule 26(c) of the Rules of Civil Procedure¹ before a protective order is permissible or enforced: "[T]he party seeking a protective order has the burden of showing that good cause exists for issuance of that order. However, it is equally apparent that the obverse also is true, *i.e.*, if good cause is not shown, the discovery materials in question should not receive judicial protection and therefore would be open to the public for inspection." *Gambale v. Deutsche Bank*, 377 F.3d 133, 142 (2d Cir. 2004) (quoting *In re "Agent Orange" Products Liab. Litig.*, 821 F.2d 139, 145 (2d Cir. 1987)); *see also In re Violation of Rule 28(D)*, 635 F.3d 1352, 1357-58 (Fed. Cir. 2011); *San Jose Mercury News*, 187 F.3d at 1103 ("It is well-established that the fruits of pre-trial discovery are, in the absence of a court

¹ Rule 26(c) of the Federal Rules of Civil Procedure is essentially identical to Rule 26(c) of the North Carolina Rules of Civil Procedure. Consequently, the federal cases cited in this section provide appropriate guidance vis-a-vis the relationship between the public interest and the public disclosure of unfiled discovery materials.

order to the contrary, presumptively public."); *Jepson, Inc. v. Makita Elec. Works, Ltd.*, 30 F.3d 854, 858 (7th Cir. 1994) (absent a protective order, "parties to a law suit may disseminate materials obtained during discovery as they see fit"); *Medical Protective Co. v. Am. Int'l Specialty Lines Ins. Co.*, No. 13-CV-357, 2014 U.S. Dist. LEXIS 166005, at *1-2 (N.D. Ind. Dec. 1, 2014) (only "legitimately confidential information" can be subject to a discovery protective order); *Arnold v. FitFlop USA, LLC*, 1 lcv973-W (KSC), 2013 U.S. Dist. LEXIS 46266, at *3 (S.D. Cal. March 29, 2013) ("Generally, the public can gain access to litigation documents and information produced during discovery unless the party opposing disclosure shows 'good cause' why a protective order is necessary") (quoting *Phillips ex. Rel. Estates of Byrd v. General Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002); *Mitchell v. Fishbein*, 227 F.R.D. 239, 254 (S.D.N.Y. 2005) (movant must demonstrate good cause for order barring public dissemination of discovery materials); *Condit v. Dunne*, 225 F.R.D. 113, 115 (S.D.N.Y. 2004) (same).

To show good cause under Rule 26(c), parties must demonstrate that disclosure will cause a clear and serious injury via a "particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." *Havens*, 1995 U.S. Dist. Lexis 5183, at *29 (quoting *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986)); see also *Carlson v.*

Geneva City Sch. Dist., 277 F.R.D. 90, 94 (W.D.N.Y. 2011) (requiring "defined, specific, and serious injury" in case with public agency as a defendant (citation omitted)); *Allen v. City of New York*, 420 F. Supp. 2d 295, 302 (S.D.N.Y. 2006) (to establish good cause, a party must demonstrate that "a clearly defined and serious injury ... would result from disclosure of the document." (internal citations and quotation marks omitted)).

The courts have repeatedly recognized that disclosure of discovery is particularly appropriate when a lawsuit sheds light on the performance of governmental agencies and entities - which is precisely the case here. *See, e.g., Flaherty v. Seroussi*, 209 F.R.D. 295, 299-300 (N.D.N.Y. 2001) (declining to seal discovery because there is "a strong, legitimate public interest on the part of the citizenry to have unfettered access to court proceedings, particularly when they involve elected officials and the performance of their governmental responsibilities").

The public's interest in this case, and in the Files, is undeniable.² It is undisputed that the Files reveal how their creator assisted legislators in this and other states in maximizing the effects of partisan gerrymandering and in attempting to manipulate the results of the United States Census in order to

² The depth and breadth of the public interest in the Files and their relation to the citizenship question is reflected in the extent and duration of their coverage by *amici* and other news organizations, such as National Public Radio, some examples of which are set out in Exhibit A to this brief.

suppress minority voters. *See*, “Deceased G.O.P. Strategist’s Hard Drives Reveal New Details on the Census Citizenship Question,” <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html>

Neither Geographic Strategies nor the Legislative Defendants have demonstrated on the record any sufficient and specific justification for this court to overlook or override the public interest in the contents and consequences of the Files. Although *amici* are not privy to the sealed itemizations, Geographic Strategies’ public filings acknowledge that it does not even assert its ownership of, or other claim of right to, the vast majority of the Files. For example, Ms. Blakenship’s affidavit says that although her company’s review encompassed more than 100,000 documents, only 17,553 of them “were identified as belonging to Geographic Strategies.” This court should not accord confidentiality to even one of those documents unless and until Geographic Strategies makes a clear and specific showing of just cause pursuant to the stringent standards set out above. The Legislative Defendants must be held to the same standards. Absent such detailed showings, their respective motions should be denied.

B. The Files Relate to Matters of Significant National Importance.

In June, while this case was pending but had not yet been tried, the Supreme Court of the United States ruled that claims of excessive partisan gerrymandering present political questions beyond the reach of the federal courts. *Rucho v. Common Cause*, 139 S. Ct. 2484, 204 L. Ed. 2d 931, 2019 U.S. LEXIS 4401, 2019

WL 2619470. Consequently, as Chief Justice Roberts noted in his opinion for the Court, it now falls to each state to address such questions, whether via voter initiatives, state statutes or, as in this case, through state court rulings grounded in state constitutions. *Id.*, at 2507-2508.

It is undisputed that many of the Files relate to political gerrymandering and other redistricting issues in states other than North Carolina. Ms. Blankenship's affidavit, at ¶ 17, lists thousands of files concerning Virginia, Arizona, Missouri, Texas and New York. An affidavit filed on behalf of Geographic Strategies by Dalton L. Oldham mentions these same states and asserts that he and Dr. Hofeller "advised" more than 40 additional states. Given these admissions, there is every reason to believe that as state courts, legislators, and other public officials across the nation confront the thorny legal and constitutional issues underlying redistricting and political gerrymandering, the Files will prove as relevant and helpful elsewhere as they have been to the court in this case. Accordingly, the widespread existence of these challenging issues throughout the nation provides this court with another compelling reason to permit public disclosure of the Files.

C. Any Order Prohibiting *The New Yorker* or Any Other Media Outlet from Using, Disseminating or Publishing the Files Would Constitute a Manifestly Unconstitutional Prior Restraint on the Press.

In their "Emergency Motion" dated 9 September 2019, Geographic Strategies reacted to *The New Yorker's* dissemination of Mr. Daley's Twitter post by tacitly accusing the plaintiffs of "leaking" the Files to the magazine in violation of this

court's order of 12 July 2019; asking this court to order Ms. Stephanie Hofeller, a non-party, and her attorney to appear and show cause why they should not be held in contempt for violating that order; asking this court to order that all copies of the Files "be destroyed or designated Confidential;" and enjoining "all individuals and entities — including Ms. Hofeller, *The New Yorker*, Mr. Daley and all those [acting in] concert with them — from using, distributing, or publishing the contents of the Hofeller files."

The plaintiffs and Ms. Hofeller can speak for themselves, but as members of the press *amici* are constrained to address Geographic Strategies' request for an injunction against *The New Yorker* that would be manifestly unconstitutional, as both its principal and its counsel surely know. "Prior restraints" on the news media, including orders that purport to curtail the news media's ability to report on matters of public interest, are "the most serious and least tolerable infringement on First Amendment rights," are "one of the most extraordinary remedies known to our jurisprudence" and thus are presumptively unconstitutional. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). In the "Pentagon Papers" case the Supreme Court did not countenance such an injunction, even in the face of the government's contentions that the documents disclosed to the press by Daniel Ellsberg contained highly classified information and that their disclosure by *The New York Times* and the *Washington Post* posed a serious threat to the nation's security. *New York Times Co. v. U.S.*, 403 U.S. 713 (1971).

In order to sustain a prior restraint on speech, the party seeking restraint must demonstrate three things: (1) there is a danger that is serious and imminent; (2) stopping the speech will avert the danger; and (3) the remedy is no broader than necessary. *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539 (1976); *New York Times Co. v. U.S.*, 403 U.S. 713 (1971); *Near v. State of Minnesota*, 283 U.S. 697 (1931). Although the Supreme Court has never upheld a prior restraint order, the Court has reflected that only such communications as “publication of the sailing dates of transports or the number and location of troops” might justify a prior restraint. *Near*, at 716. No such communications, of course, are remotely at issue here.

Courts routinely have held that the existence of a prior restraint order – even for a moment– constitutes irreparable harm to the speaker enjoined. *New York Times Co. v. U.S.*, *supra*, at 714-15 (1971) (Black, concurring) (“every moment's continuance of the injunctions against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment.”); *Nebraska Press Ass'n*, 427 U.S. at 559 (1976) (“The Court's conclusion in *New York Times* suggests that the burden on the Government is not reduced by the temporary nature of a restraint”); *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”) Given the notoriety of the Supreme Court's repeated and near universal condemnation of prior restraints on the press, Geographic Strategies'

request is as astonishing as it is lacking in merit and should be rejected out of hand by this court.

Conclusion

For the reasons set forth above, *amici* respectfully urge this court to deny the motions filed by Geographic Strategies and the Legislative Defendants seeking the destruction of the Files or their designation as confidential

Respectfully submitted this 13th day of September, 2019.

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CERTIFICATE OF SERVICE

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This 13th day of September, 2019.

By: 
Hugh Stevens

Exhibit A

Coverage of the Hofeller Files by The New York Times, the Associated Press, and National Public Radio

New York Times Coverage

The New York Times has reported on Mr. Hofeller and his political work for almost forty years. The newspaper first quoted him in [1981](#), commenting on Democratic plans for redistricting in California. The Times continued regularly to report on his work and to quote him commenting on the US census, redistricting, and gerrymandering up until his death, and published the attached lengthy obituary on August 21, 2018, discussing the scope and impact of his career.

In 2019, alone, The Times has published more than 200 articles regarding the administration's proposed addition of a citizenship question to the census, the potentially significant impact of that decision, the ensuing Congressional inquiries into the change, the various challenges brought in federal courts, seeking to block the question, and the disclosure of Mr. Hofeller's files analyzing the connection between the question and voter suppression.

On May 30, 2019, The Times published an article and an editorial reporting on Ms. Hofeller's discovery and disclosure of hard drives in her father's home. See Michael Wines, *Deceased G.O.P. Strategist's Hard Drives Reveal New Details on the Census Citizenship Question*, N.Y. Times (May 30, 2019), <https://www.nytimes.com/2019/05/30/us/census-citizenship-question-hofeller.html?searchResultPosition=20>; Looks Like the Trump Administration Lied About the Census (May 30, 2019), <https://www.nytimes.com/2019/05/30/opinion/census-citizenship-supreme-court.html?searchResultPosition=2>.

Since then, The Times has reported extensively on the impact of the Hofeller documents on the citizenship question dispute. See, e.g.:

David Leonhardt, *A Partisan Grab, in Six Steps*, N.Y. Times (June 3, 2019), <https://www.nytimes.com/2019/06/03/opinion/census-citizenship-question-supreme-court.html?searchResultPosition=6>

Michael Wines, *Charges of Politics in Census Debate Are 'Smoke and Mirrors,' Justice Dept. Says*, N.Y. Times (June 3, 2019) <https://www.nytimes.com/2019/06/03/us/census-citizenship-question-hofeller.html?searchResultPosition=7>

Michael Wines, *Deceased Strategist's Files Detail Republican Gerrymandering in North Carolina, Advocates Say* (June 6, 2019) <https://www.nytimes.com/2019/06/06/us/north-carolina-gerrymander-republican.html?searchResultPosition=8>

Michael Wines, *Fight Over Census Documents Centers on Motive for a Citizenship Question* (June 12, 2019) <https://www.nytimes.com/2019/06/12/us/census-citizenship-question-motives.html?searchResultPosition=11>

Catie Edmondson and Michael Wines, *Official's Testimony Adds to Rancor Around Citizenship Question* (June 25, 2019) <https://www.nytimes.com/2019/06/25/us/politics/census-citizenship-question.html?searchResultPosition=13>

Michael Wines, *Reopened Legal Challenge to Census Citizenship Question Throws Case Into Chaos* (June 25, 2019) <https://www.nytimes.com/2019/06/25/us/census-citizenship-question.html?searchResultPosition=14>

Adam Liptak, *Supreme Court Leaves Census Question on Citizenship in Doubt* (June 27, 2019) <https://www.nytimes.com/2019/06/27/us/politics/census-citizenship-question-supreme-court.html?searchResultPosition=16>

Emily Bazelon, *The Supreme Court Isn't as Naive as Trump Hoped* (June 27, 2019) <https://www.nytimes.com/2019/06/27/opinion/supreme-court-census-trump.html?searchResultPosition=19>

M. Wines, et al., *Justice Dept. Reverses Course on Citizenship Question on Census, Citing Trump's Orders* (July 3, 2019) <https://www.nytimes.com/2019/07/03/us/politics/census-citizenship-question.html?searchResultPosition=22>

Michael Wines, *Judge is Asked to Punish Officials Over Tactics in Census Question Dispute* (July 16, 2019) <https://www.nytimes.com/2019/07/16/us/census-citizenship-question-sanctions.html?searchResultPosition=24>

Michael Wines, *The Battle Over the Files of a Gerrymandering Mastermind* (Sept. 4, 2019) <https://www.nytimes.com/2019/09/04/us/gerrymander-north-carolina-hofeller.html?searchResultPosition=26>

Michael Wines, *Republican Gerrymander Whiz Had Wider Influence Than Was Known* (Sept. 10, 2019) <https://www.nytimes.com/2019/09/10/us/republican-gerrymander-thomas-hofeller.html?searchResultPosition=27>

Associated Press Coverage

L. Neumeister, et al., *Lawyer: Docs show census changed to give Republicans edge* (May 31, 2019) <https://www.apnews.com/bbc9132adf4f4b56bb2eae44d8ebe4fa>

P. Weber, et al., *Census citizenship question could transform state elections* (May 31, 2019) <https://www.apnews.com/a2fd0d423a364e95a41d40b8a029b082>

Larry Neumeister, *Judge: Claims of political motives in census fight 'serious'* (June 5, 2019)
<https://www.apnews.com/1f5587254bda4e9381db1d1255fc6a16>

Gary Robertson, *Lawyers: Redistricting expert files show judges were misled* (June 6, 2019)
<https://apnews.com/0638276854214eaa9698dfb6746ac744>

Jonathan Drew, *Advocates: Emails show that census question discriminates* (June 15, 2019)
<https://www.apnews.com/4de413c7ecc846208c3c2d4c718e0bb9>

Gary Robertson, *North Carolina GOP pushes back on redistricting allegations* (June 18, 2019)
<https://www.apnews.com/8f57e5ead2494e79b93f0af7ccb6294d>

David McFadden, *Judge: Census question might have discriminatory motive* (June 24, 2019)
<https://www.apnews.com/cafb647f14504471a21a2e90a1b4689c>

G. Robertson, et al., *Gerrymandering architect's files figure in census, map cases* (June 28, 2019)
<https://www.apnews.com/d53cafafac6b42429a88bb012d34907b>

Gary Robertson, *Files from dead mapmaker focus of NC redistricting hearing* (July 2, 2019)
<https://www.apnews.com/d903529c0c3e4bb29f6fe0ce130805f6>

Gary Robertson, *Court; GOP mapmaker's files allowed in gerrymandering trial* (July 13, 2019)
<https://www.apnews.com/ea3e4cf0f23f4919b4c5945f8c933479>

Gary Robertson, *NC trial looks at partisan bias after US justices won't* (July 16, 2019)
<https://www.apnews.com/0f4547e2904b492a8628dc56ce4e2397>

First week over in North Carolina gerrymandering trial (July 19, 2019)
<https://www.apnews.com/2068ef24b17a4972a3530e3199cb236c>

Emery Dalesio, *North Carolina trial into partisan gerrymandering wraps up* (July 26, 2019)
<https://www.apnews.com/848e334ab61d4a2eb8358fb4567aec5d>

E. Dalesio, et al., *North Carolina judges toss districts drawn for GOP advantage* (Sept. 4, 2019)
<https://www.apnews.com/8925fafddb364cb8bed1561bf27aedad>

NPR Coverage

In addition to several radio spots filed by Reporter Hansi Lo Wang on May 30, 2019; June 1, 2019; June 3, 2019; and June 15, 2019, NPR has reported extensively online regarding the impact of the Hofeller documents, including:

Hansi Lo Wang, *GOP Redistricting Strategist Played Role In Push For Census Citizenship Question* (May 30, 2019) <https://www.npr.org/2019/05/30/728232221/gop-redistricting-strategist-played-role-in-push-for-census-citizenship-question>

Hansi Lo Wang, *Emails Connect Census Official With GOP Strategist On Citizenship Question* (June 15, 2019) <https://www.npr.org/2019/06/15/732669380/emails-connect-census-official-with-gop-strategist-on-citizenship-question>

Hansi Lo Wang, Radio Broadcast Aired during Newscast on Sept. 4, 2019 (audio starts around 3:45) https://edge2.pod.npr.org/anon.npr-mp3/npr/newscasts/2019/09/04/newscast120811.mp3/newscast120811.mp3_a7e0221be3d920b0803fd0b719589dc5_4791504.mp3?siteplayer=true&size=4500000&awCollectionId=500005&awEpisodeId=757521527&dl=1&x-ais-classified=download&hash_redirect=1&x-total-bytes=4791504&listeningSessionID=0CD_382_254_97883a4c63f68228b052b0679bee19b67f3df96f

Miles Parks, *Redistricting Guru's Hard Drives Could Mean Legal, Political Woes For GOP* (June 6, 2019) <https://www.npr.org/2019/06/06/730260511/redistricting-gurus-hard-drives-could-mean-legal-political-woes-for-gop>

The New York Times

Thomas Hofeller, Republican Master of Political Maps, Dies at 75

By Michael Wines

Aug. 21, 2018

Thomas B. Hofeller, a political consultant whose mastery of redistricting strategy helped propel the Republican Party from underdog to the dominant force in state legislatures and the House of Representatives, died on Thursday at his home in Raleigh, N.C. He was 75.

The Rev. Greg Jones, the rector of St. Michael's Episcopal Church in Raleigh, where a service is scheduled for Friday, confirmed the death. The political website The Hill, quoting Dale Oldham, a business partner of Mr. Hofeller's, said the cause was cancer.

For most of his 48-year career, Mr. Hofeller was little known outside the small band of government clerks, political strategists and data buffs who surfaced, cicada-like, after every decennial census to draw new political maps.

But after Republicans swept many state legislative elections in 2010, giving them control over the political maps that would be drawn after that year's census, Mr. Hofeller gained an almost mythic reputation as an architect of the party's comeback.

He was extolled — or lambasted — in magazines and books and online as a father of the Republican strategy of cementing political control by controlling redistricting, and as the Michelangelo of the modern gerrymander.

He was in fact an important element of Republican success after 2010, most notably in North Carolina, where he drew new maps for House seats that turned a 7-to-6 Democratic edge into a 10-to-3 Republican fortress. Mr. Hofeller also advised Pennsylvania Republicans in redrawing that state's House map in 2011, as well as Paul Ryan of Wisconsin, the speaker of the House.

In 2012, the Republican Party won a 33-seat majority in the House despite collecting 1.4 million fewer votes nationally than Democratic candidates. It was only the fourth time in a century that a party won the House while losing the popular vote.

But Mr. Hofeller's most lasting impact on Republican fortunes may well date to the 1980s, early in his career, when he pursued a counterintuitive strategy to speed the party's return to power in the South. His idea was to use the centerpiece of Democratic civil-rights policy, the 1965 Voting Rights Act, to force Southern states to draw more majority-black districts.

At the time, white Democrats still dominated state legislatures and local governments in the Deep South. In meetings with local black politicians, Mr. Hofeller showed how new political boundaries could bring together African-American voters who had been divvied up among districts controlled by white Democrats.

He was part of a Republican National Committee team that drafted an amicus brief supporting black plaintiffs in *Thornburg v. Gingles*, a 1986 Supreme Court case that effectively made the creation of black-majority districts a consideration in map-drawing.

The new districts gave blacks entree into a political system that had been closed to them — and made surrounding districts more white and more receptive to Republican candidates. Mr. Hofeller convinced black politicians that they had a common cause against white Democrats, who he said had rigged the system against both them and Republicans, Mark Braden, a former chief counsel to the Republican National Committee, said in an interview.

“Tom played a key role across the South in the destruction of the traditional Democratic Party,” said Mr. Braden, now a lawyer at BakerHostetler in Washington.

That view is shared by Kimball Brace, the president of the Democratic political consulting firm Election Data Services and a colleague of Mr. Hofeller’s since the 1970s. “The Democrats didn’t see what was coming,” he said.

Thomas Brooks Hofeller was born in April 1943 in San Diego and served on a Navy destroyer in the Tonkin Gulf during the Vietnam War. He lived for many years in Alexandria, Va., and sang tenor in the National Cathedral choir before retiring to North Carolina. He is survived by his wife, Kathleen Hofeller, as well as a brother and a daughter, The Hill said.

A political science major — and later the holder of a Ph.D. in government — Mr. Hofeller created a computerized mapping system in the early 1970s for the California State Assembly.

He soon got a sour taste of the power a ruling party could wield when it drew political boundaries. In 1981, California Democrats proposed a new map of congressional districts that critics said set national benchmarks for unfairness. Mr. Hofeller, by then a founder of a public-policy research institute at Claremont McKenna College, his alma mater, proposed an alternative set of maps, to no avail.

A year later he joined the Republican National Committee, overseeing its data operations. Crunching numbers and aiding state and local party organizations, he quickly became the national party’s redistricting guru.

“He had the granular knowledge of what a district was really like,” said Benjamin L. Ginsberg, a veteran Republican Party counsel and now at the Washington firm Jones Day. Like great composers, mathematicians and painters, he said, Mr. Hofeller elevated political mapmaking to an art — “part knowledge, part genius.”

Mr. Hofeller churned through a series of jobs, including in the Agriculture Department and as the staff director of a House committee overseeing the census, before returning to redistricting full time in 1999, this time as a consultant for the Republican National Committee and other groups.

His résumé, submitted in a lawsuit against his work on House maps in North Carolina, stated dryly that he gave “strategic, technical and legal support to members of Congress and those involved in redistricting in all states, including plan drafting.”

David Daley, whose book “Ratf**ked” is the definitive account of Republican redistricting strategy, said Mr. Hofeller did much more than that. “Tom Hofeller invented modern redistricting,” Mr. Daley said in an interview. “He understood before anyone the importance of state legislatures and the possibilities for long-term Republican control if the party owned every seat at the table when it came time to redistrict.”

A welter of Democratic initiatives to recapture state legislatures, including one begun after the 2016 election by President Barack Obama and his attorney general, Eric Holder, were effectively “trying to catch up to what Hofeller understood 25 years ago,” Mr. Daley said.

Mr. Daley, like many other critics, said he viewed Mr. Hofeller’s accomplishments as anti-majoritarian, if not anti-democratic. Various United States Supreme Court justices have repeatedly condemned gerrymandering as an assault on democracy, even as they vacillated over how and whether to rein it in.

Mr. Hofeller, however, appeared to view skewed maps not as a moral issue but as a practical means to a political end: electing as many Republicans as possible. When Democratic gerrymanders locked Republicans out of state offices and the House in the 1980s, he was their opponent, assisting plaintiffs in a landmark Supreme Court case, *Davis v. Bandemer*, that sought to outlaw partisan gerrymanders as unconstitutional.

But later, as the leading Republican drafter of partisan maps, he became their advocate, educating party activists in the art and importance of skillfully drawn boundaries. His PowerPoint presentation won a reputation for what came to be called “Hofellerisms,” slides that issued sometimes-hokey advice like “Don’t get cute, remember, this IS legislation!” “Don’t reveal more than necessary” and “Emails are the tool of the devil.”

Mr. Hofeller practiced what he preached. In 2017, deposed under oath in a federal lawsuit challenging his North Carolina House maps, he left prosecutors empty-handed when they sought evidence of the instructions state Republicans had given him.

“There were no instructions given to you in writing?” they asked.

“No,” Mr. Hofeller replied.

“There’s no paper trail against which we can evaluate your description of the instructions?”

“I don’t believe so, no.”

“But you advised them not to give you instructions in writing, to do so orally?”

"I don't recollect that," Mr. Hofeller said.

A three-judge panel ruled in January that Mr. Hofeller's maps were an unconstitutional gerrymander. This summer, however, the Supreme Court ordered the judges to reconsider the decision; if the case returns to the Supreme Court, as seems likely, the maps could be the basis of a historic and potentially decisive ruling.

Correction: Aug. 23, 2018

An earlier version of this obituary misstated Mr. Hofeller's role in Thornburg v. Gingles, a 1986 Supreme Court case that effectively made the creation of black-majority districts a consideration in drawing electoral maps. He was part of a Republican National Committee team that drafted an amicus brief supporting black plaintiffs in the case; he was not an expert witness for them.

Doris Burke contributed research.

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