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REPLY TO: Charlotte Office

April 7, 2014

Rick Glaser
Parker Poe
Three Wells Fargo Center
401 South Tryon Street
Suite 3000
Charlotte, NC, 28202

RE: U.S. v. Cannon, Grand Jury Subpoena Requests

Dear Mr. Glaser,

Please accept this letter in your capacity as retained counsel for the City of Charlotte in the above-captioned matter. Thank you for your cooperation in the *U.S. v. Cannon* investigation and prosecution. I am writing to discuss my interest in respecting the North Carolina Public Records Act (N.C.G.S. §132-1(a) *et seq.*) while also ensuring that the integrity of the criminal investigation and prosecution, pursuant to federal rules and laws, is protected. I am certain that a fair balance exists.

Under the Local Federal Rules (LCrR 23.1), my office has a duty, in connection with pending or imminent criminal litigation, not to release or authorize the release of information or opinion for dissemination by any means of public communication, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

In addition to the local rule provided above, Fed.R.Crim.P 6(e)(3)(C), which is the general rule of secrecy protecting grand jury proceedings, serves to protect the integrity of an investigation, and also protects potentially innocent persons. *See Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 219 (1979). In the instant investigation, we have requested, pursuant

to Federal Grand Jury subpoena, numerous City and County records, some of which name employees who may or may not be a subject in the greater investigation.

The North Carolina Bar Rules of Professional Conduct address the difficulty in striking a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial. I am also keenly aware that there are vital social interests served by the free dissemination of information about events having legal consequences – but recognize that these interests must be balanced with the public’s legitimate interest in the conduct of judicial proceedings, particularly in matters of public concern. It is with these interests in mind that I am proposing a mechanism by which the North Carolina Public Records Act and the right to a fair trial can be considered.

To ensure that the focus of this investigation and prosecution remains on the compelling facts, and not on the out of court disclosures of investigative requests, I am asking that any information which could interfere with a fair trial, prejudice the due administration of justice, or which could implicate potentially innocent persons not be released to the public until my office has an opportunity to review the records compiled pursuant to a Grand Jury subpoena. Specifically, I am requesting that materials compiled pursuant to a Grand Jury subpoena in the instant case not be disclosed for a reasonable period not to exceed 60 days after compliance with the subpoena in order for my office to evaluate the information and determine if the release of any requested information would violate any federal rule or law. Materials subject to this withholding and review would not include communications or documents provided generally to all elected officials, *i.e.*, city council meeting agendas, council manager memoranda, committee meeting minutes, filed petitions and legal documents. Our desire is not to thwart the N.C. Public Records Act, rather to protect the investigation pending review of the materials.

Once my office and the Federal Bureau of Investigation have an opportunity to review and evaluate the materials provided pursuant to the Grand Jury subpoena, we will determine whether the materials require further protection, via a Protection Order entered by the United States District Court pursuant to the Supremacy Clause of the Constitution¹ (which establishes that the Constitution, and federal law generally, take precedence over state laws) and the All Writs Act² (28 U.S.C. §1651).

Accordingly, I am respectfully requesting that if you receive individual requests for records which may implicate Local Federal Rule 23.1, Fed.R.Crim.P 6, or the Rules of

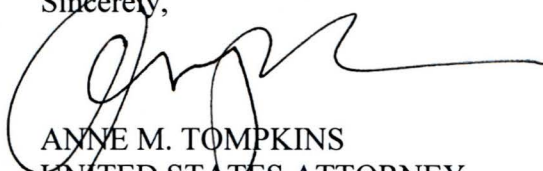
¹ Article VI, Clause 2.

² Under the All Writs Act, federal courts “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. §1651(a)(2012).

Professional Conduct, please contact me so that we may discuss the request and determine whether the 60-day investigative hold is implicated.

Thank you for your assistance and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anne M. Tompkins', with a long horizontal flourish extending to the right.

ANNE M. TOMPKINS
UNITED STATES ATTORNEY
WESTERN DISTRICT OF NORTH CAROLINA