

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

JANET JENKINS, et al.,	)	
	)	
Plaintiffs,	)	Docket No. 2:12-cv-00184
	)	
v.	)	
	)	
KENNETH L. MILLER, et al.,	)	
	)	
Defendants.	)	
	)	

**RESPONSE OF DEFENDANTS LIBERTY COUNSEL, INC.  
AND RENA M. LINDEVALDSEN IN OPPOSITION TO  
PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF AT&T RECORDS**

Defendants Liberty Counsel, Inc. and Rena M. Lindevaldsen, pursuant to Local Rule 7, respond in opposition to Plaintiff’s Motion to Compel Defendants Liberty Counsel, Inc. and Rena Lindevaldsen to Produce AT&T Records (Doc. 582).

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## INTRODUCTION

Plaintiff Jenkins moves to compel production of all AT&T telephone records for Lindevaldsen, her husband, and two other Liberty Counsel attorneys, for a two-year period, comprising over 7,500 pages and over 163,000 calls and texts (the “AT&T Records”). Putting aside the demand’s lack of relevance and proportionality, the most remarkable contention in the motion is that **all** the phone communications of three attorneys at a First Amendment law firm, for a two-year period, “do not implicate **any** privilege or privacy.” (Jenkins Mot., Doc. 582, at 1 (emphasis added).) The expansive records demanded by Jenkins would reveal the identities of Liberty Counsel’s clients, potential clients, donors, supporters, and other constituents, all of whom depend on the sacrosanct confidentiality afforded by the attorney-client privilege and their fundamental rights of free association protected the First Amendment. Moreover, Jenkins’ only justification for compelling the disclosure is the fatal weakness of her conspiracy claims against Liberty Counsel and Lindevaldsen, though she strains to cloak her desperation in sophistic arguments of relevance and proportionality. The Court should deny Jenkins’ unjustified, quintessential fishing expedition into Liberty Counsel’s privileged communications.

## FACTUAL BACKGROUND

**A. The AT&T Records Demanded by Jenkins Comprise Over 7,500 Pages of Liberty Counsel Attorney Communications With Clients, Potential Clients, Donors, Supporters, and Other Constituents Regarding Liberty Counsel’s Legal and Public Advocacy.**

Liberty Counsel and its attorneys engage in pro bono, public interest litigation involving First Amendment and other constitutional matters. (Staver Decl. ¶ 4; Mihet Decl. ¶ 3.) The Jenkins Motion demands that Liberty Counsel produce the AT&T wireless telephone records for Liberty Counsel attorneys Mathew D. Staver and Horatio G. Mihet, as well as former Liberty Counsel

attorney Lindevaldsen and her husband Karl, for a two-year period, comprising over 7,500 pages and over 163,000 calls and texts (the “AT&T Records”). (Jenkins Mot. 1–2; Mihet Decl. ¶ 5.)

During the time period covered by the AT&T Records, September 1, 2009 through September 30, 2010 (the “AT&T Records Period”), Liberty Counsel attorneys Staver, Mihet, and Lindevaldsen used their respective wireless numbers to communicate with Liberty Counsel clients, potential clients, donors, supporters, and other constituents regarding Liberty Counsel’s legal and public advocacy. (Staver Decl. ¶ 6; Mihet Decl. ¶ 6; R. Lindevaldsen Decl. ¶ 6.) With Liberty Counsel clients and potential clients, these daily communications included requesting and providing legal advice and representation. (Staver Decl. ¶ 6; Mihet Decl. ¶ 7; R. Lindevaldsen Decl. ¶ 6.) Liberty Counsel clients and potential clients often include minors, public school students and employees, military and government employees, and others with heightened privacy and confidentiality interests, seeking legal advice and counsel on issues involving religious liberty and free speech, as well as deeply personal matters such as pressure to obtain an abortion, sexuality, and other matters of self-determination. (*Id.*) With Liberty Counsel donors, supporters, and other constituents these daily communications included requesting and providing financial, material, and strategic support and other information relating to Liberty Counsel’s legal and public advocacy activities. (Staver Decl. ¶ 6; Mihet Decl. ¶ 7.)

Individuals and organizations contact Liberty Counsel with the expectation and understanding that the nature of their highly sensitive and personal matters, and even the fact of their contacting Liberty Counsel, will be maintained in the strictest confidence. (Staver Decl. ¶ 6; Mihet Decl. ¶ 7; R. Lindevaldsen Decl. ¶ 6.) Many of these individuals and organizations would be chilled in seeking legal advice or associating and advocating with Liberty Counsel to the point that they would not contact Liberty Counsel at all if they knew that either the nature or fact of their

communications with Liberty Counsel could be disclosed publicly, and especially to ideological opponents of Liberty Counsel. (*Id.*) Many such individuals and organizations have requested from Liberty Counsel attorneys that the fact and nature of their contact with Liberty Counsel will be maintained in the strictest confidence. (*Id.*)

At all times Liberty Counsel has protected and maintained the confidentiality and privacy of its records of communications with, and identities of, all its clients, potential clients, and donors. (Staver Decl. ¶ 8.) Liberty Counsel has never published or otherwise disclosed any such associations without consent (*Id.*) Many individuals and organizations that were Liberty Counsel clients, potential clients, donors, supporters, or other constituents during the AT&T Records Period remained associated with Liberty Counsel after the AT&T Records Period and remain so presently. (*Id.* ¶ 9.) Moreover, many such individuals and organizations are or were associated with Liberty Counsel in more than one category (*i.e.*, clients, potential clients, donors, supporters, or other constituents). (*Id.*) Producing the AT&T Records as demanded by Jenkins would identify by telephone number the private and confidential identities of Liberty Counsel’s clients, potential clients, donors, supporters, and other constituents. (Staver Decl. ¶ 10; Mihet Decl. ¶ 8.)

Jenkins is represented in this case by the Southern Poverty Law Center (SPLC), which has unilaterally and pejoratively designated Liberty Counsel a “hate group,” because it disagrees with Liberty Counsel’s pro bono public interest advocacy. (Mihet Decl. ¶ 9.) Moreover, the SPLC has also publicly made clear its intent to “wreck” and “destroy” Liberty Counsel for the First Amendment work and advocacy it provides to oppose initiatives and matters that the SPLC advocates:

Sometimes the press will describe [SPLC] as monitoring hate groups and so on. **I want to say plainly that our aim is to destroy these groups, to completely destroy them.**

\* \* \*

We see this as a political struggle, right . . . . **We're trying to wreck these groups**, and we are very clear in our head, this—**we are trying to destroy them . . . as a political matter, to destroy them.**

*Mark Potok Speech 1*, YOUTUBE (Sept. 11, 2007), [https://www.youtube.com/watch?v=fnTz2yIJo\\_8&feature=reImfu](https://www.youtube.com/watch?v=fnTz2yIJo_8&feature=reImfu) (speech of SPLC Senior Fellow Mark Potok, discussing SPLC's purpose in attaching "hate group" label to certain organizations with which it disagrees) (emphasis added). (Mihet Decl. ¶ 9.) If Jenkins' Southern Poverty Law Center (SPLC) attorneys are permitted to have full access to the AT&T Records, and by extension to the identities of Liberty Counsel's clients, potential clients, donors, constituents and associates, all of these latter individuals would certainly be far less likely to communicate with, associate with, or seek out and retain Liberty Counsel, which will not only deprive Liberty Counsel of future clients, but will also deprive Liberty Counsel of information necessary to the proper handling of its existing clients' matters to those existing clients' detriments. (Mihet Decl. ¶ 10) Liberty Counsel's public interest advocacy on issues of public importance would be similarly gravely impeded and harmed. (*Id.*)

Determining which records of communications within the AT&T Records are subject to the attorney-client, associational, or other privilege or protection from disclosure would require multiple steps for each telephone number contained in the over 7,500 pages of Records: (1) each of at least three separate computer databases would have to be searched for each number to determine whether the number is linked to any person or organization in the database; then (2) each database would have to be searched for any matching name to determine all associations with Liberty Counsel and any privileges or protections from disclosure applicable to such identification; and (3) for any number that is not linked to any person or organization in Liberty Counsel's databases, public or commercial reverse lookup services would have to be searched for each such number to determine all persons or organizations to which the number is linked; then (4) each Liberty Counsel database would have to be searched for any matching name to determine all

associations with Liberty Counsel and any privileges or protections from disclosure applicable to such identification. (Staver Decl. ¶ 11.) Completing this review of the AT&T Records would require an inestimable number of hours of work, likely spanning months even with multiple persons dedicated to completing the review. (*Id.*)

**B. Liberty Counsel's Representation of Lisa Miller.**

Liberty Counsel began representing Lisa Miller in her state court disputes with Jenkins over custody of Isabella in 2004. (Staver Decl. (Doc. 238-2) ¶ 7.) Lindevaldsen represented Miller as an attorney employee of Liberty Counsel until August 2006, after which time Lindevaldsen continued representing Miller as an attorney independent contractor for Liberty Counsel. (Staver Decl. (Doc. 238-2) ¶ 8; R. Lindevaldsen Decl. ¶ 4.)

Attorney Mihet had only minimal involvement in Liberty Counsel's representation of Lisa Miller in her custody dispute with Jenkins, attending just one hearing in the state court litigation in or around May 2009. (Mihet Decl. ¶ 13.) He did not meet Lisa Miller in person, and spoke with her by telephone only once during the course of Liberty Counsel's representation, around the time he attended the one hearing in her case. (Mihet Decl. ¶ 13.)

Karl Lindevaldsen never worked for Liberty Counsel, or for or on behalf of Lisa Miller, and never communicated with her about her legal matters or issues. (K. Lindevaldsen Decl. ¶¶ 3, 7.) During the AT&T Records Period, he never used his wireless number to communicate with Lisa Miller, Isabella Miller-Jenkins, or with any Defendant or alleged co-conspirator in this case except for his wife, Rena Lindevaldsen. (*Id.* ¶ 5.) The entirety of Karl Lindevaldsen's contacts with Lisa Miller during the AT&T Records Period consisted of her joining the homeschool co-op in which he taught, although they never worked together or had any substantive conversation, and she never assumed the teaching role for which she joined. (*Id.* ¶ 6.) Lisa Miller's involvement in the co-op was limited to showing up for approximately one week in late August or early September

2009, apparently to set up her classroom and otherwise prepare for the upcoming 2009–2010 school year, but she never came back. (*Id.*) Her departure was sudden and unexpected because she gave no indication that she did not intend to participate in the co-op for the duration of the school year. (*Id.*)

Each of attorneys Staver, Mihet, and Lindevaldsen, and Lindevaldsen’s husband Karl, unequivocally disclaims any direct or indirect assistance or involvement in Lisa Miller’s leaving the United States with Isabella, and likewise disclaims any prior knowledge of her intent to leave the country. (Staver Decl. (Doc. 238-2) ¶¶ 11, 19–21; R. Lindevaldsen Decl. (Doc. 238-3) ¶¶ 6–18; Mihet Decl. ¶ 14; K. Lindevaldsen Decl. ¶ 9.)

## ARGUMENT

### **I. THE REQUESTED AT&T RECORDS ARE NOT DISCOVERABLE BECAUSE THEY ARE PRIVILEGED.**

#### **A. The AT&T Records Effectively Create a Client List Protected from Disclosure by the Attorney-Client Privilege.**

As shown above, the Jenkins Motion demands production of the AT&T Records comprising over 7,500 pages of Liberty Counsel’s attorney communications with clients, potential clients, donors, supporters, and other constituents. Rule 26, however, expressly limits the scope of discovery to “nonprivileged matter.” Fed. R. Civ. P. 26(b)(1). Communications between an attorney and client for the purpose of giving or receiving legal advice are undoubtedly privileged. *See In re Grand Jury Proceedings*, 727 F.2d 1352, 1355 (4th Cir. 1984) (“The attorney-client privilege as traditionally recognized at common law and as now incorporated in the Federal Rules of Evidence, controls in all federal judicial proceedings.”) So are the communications of a potential client with and attorney for the purpose of requesting legal services or legal advice, even if the attorney receiving the communication is not ultimately retained. *See Feirro v. Gallucci*, No. 06-CV-5189 (JFB)(WDW), 2007 WL 4287707, \*7 (E.D.N.Y. Dec. 4, 2007) (“[A]ny communication

made during this preliminary consultation is protected by the duty of confidentiality and protected by the attorney-client privilege.”)

Although the AT&T Records do not disclose the contents of the calls and texts of Attorneys Staver, Lindevaldsen, and Mihet, they effectively constitute a client list by capturing every phone call and text for three Liberty Counsel attorneys over a two-year period. Jenkins and SPLC have indicated a clear intention to identify the parties to the calls using reverse-lookup resources. (Mihet Decl. ¶¶ 17–18; Mihet-Soto E-mails, Ex. 1, at 1.) Such a client list directly implicates the attorney-client privilege according to the Fourth Circuit in the case *In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 164 (4th Cir. 2019) [hereinafter *Search Warrant*]. There, the court invoked the “foundational principles that protect attorney-client relationships” in holding that the government’s review of all of a lawyer’s e-mails for a period of time, in an investigation of alleged wrongdoing by the lawyer in connection with one of his clients, should be enjoined. At the request of federal agents investigating alleged wrongdoing of a lawyer (“Lawyer A”) in connection with the alleged wrongdoing of his client (“Client A”), a magistrate authorized a search warrant for records including all e-mails of Lawyer A. *Id.* at 165–66. The search warrant allowed the e-mails to be seized and reviewed by an ostensibly disinterested “Filter Team” of federal agents and prosecutors not assigned to the investigation, who were tasked with making privilege determinations before handing responsive e-mails over to their fellow agents and prosecutors who were assigned to the case. *Id.* Lawyer A’s law firm sought an injunction against the Filter Team’s review of Lawyer A’s e-mail on grounds of attorney-client privilege and the work product doctrine. *Id.* at 164. The district court denied the injunction, holding the law firm had not established irreparable harm, and the law firm appealed. *Id.*

The Fourth Circuit reversed on several grounds, including privilege. *Id.* The law firm had demonstrated to the district court that, of the 52,000 Lawyer A e-mails seized, a name search revealed only 116 involved communication between or about Client A, the purported subject of the investigation. *Id.* at 168. The other e-mails involved potentially all other clients of the firm, whom the Filter Team “might thereby become interested in investigating.” *Id.* The Government had argued, however, that “if it had provided search terms to the Law Firm, those terms would have revealed what the government was searching for.” *Id.* at 169. But the Fourth Circuit implicitly rejected the government’s work product excuse,<sup>1</sup> explaining that the district court “ignored evidence that less than one percent of the seized emails were from Client A, were to Client A, or mentioned Client A’s surname, and that many seized emails contained privileged communications and attorney work product concerning other Law Firm clients,” *id.* at 172, and held the district court abused its discretion because it “did not grapple with the harm that is likely to be inflicted on the Law Firm and its clients from the Filter Team’s review of many of the seized emails.” *Id.*

The *Search Warrant* court further explained the law firm’s irreparable harm from its litigation adversary’s unfettered access to all Lawyer A’s e-mails by illuminating the history and purposes of the attorney-client and work product privileges. *Id.* at 172–75. The court observed that “the attorney-client privilege is ‘the oldest of the privileges for confidential communications known to the common law,’” *id.* at 172–73 (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)), and that “the attorney-client privilege exists because ‘sound legal advice or advocacy serves public ends and . . . such advice or advocacy depends upon the lawyer’s being fully informed by the client.’” *Id.* at 173 (modification in original). Thus, the Court explained, “lawyers are

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<sup>1</sup> Jenkins tries the same excuse here, and this Court should likewise reject it. (*See infra* Pt. III.)

obliged to protect the attorney-client privilege to the maximum possible extent on behalf of their clients.” *Id.* at 173. And, “[a]lthough the work-product doctrine does not trace as far into history as the attorney-client privilege, it is no less important.” *Id.* at 173.

The Fourth Circuit ultimately concluded that “an adverse party’s review of privileged materials seriously injures the privilege holder,” *id.* at 175, and also injures the privilege holder’s attorneys, because,

adverse publicity about the search of the Law Firm . . . could make potential clients less likely to seek out and retain the Firm. Additionally, potential and current clients might be reluctant to candidly communicate with the Law Firm attorneys because they fear [the adversary’s] review of their communications and breaches of confidentiality. Consequently, the Law Firm is likely to be deprived of information necessary to the proper handling of its cases.

*Id.* at 175 n.16. Thus, the unfettered review of all Lawyer A’s e-mails “was and is injurious to the Firm and its clients. And that harm is plainly irreparable, in that the Filter Team’s review of those privileged materials cannot be undone.” *Id.* at 175.

Importantly, the Fourth Circuit recognized not only that the *content* of the seized communications implicated the clients’ privileges, but also that **having all of Lawyer A’s e-mails effectively gave his adversary a client list**, which was privileged in and of itself:

By asking the Law Firm to furnish the Filter Team with a client list . . . the government demonstrated a lack of respect for the attorney-client privilege and the Firm’s duty of confidentiality to its clients. In declining to reveal a client list to the Filter Team, the Law Firm relied on its ethical obligations to protect confidential and privileged information relating to its clients. Such information will sometimes include the existence of the lawyer-client relationship itself. *See In re Grand Jury Subpoena*, 204 F.3d 516, 520 (4th Cir. 2000) (recognizing that the attorney-client privilege can “extend to the client’s identity”); 1 Hazard, Jr. et al., [*The Law of Lawyering*], § 10.12 (collecting cases where client identity considered confidential or privileged).

*Search Warrant*, 942 F.3d at 180 (citation omitted).

In this case, while the AT&T Records of all calls and texts of three Liberty Counsel attorneys for two years are not exactly the same as all of Lawyer A's e-mails at issue in *Search Warrant*, simply because the content of the Liberty Counsel calls are not at issue, disclosure of all of the AT&T Records nonetheless implicates the same privileges and would inflict the same injuries on Liberty Counsel and its clients—it is a matter of degree. In both cases, there is a chilling effect on the clients' communicating with their lawyers, or contacting their lawyers at all. To be sure, the harm to the clients and their attorneys is all the more likely where the adversary has publicly stated its intent to “destroy” the law firm whose communications with its clients are targeted because of the adversary's animus towards the law firm's beliefs, and where the clients engaged the law firm because it takes cases aligned with those beliefs. Many clients would be justified in fearing they will be targeted next because they associated with the law firm at all, regardless of the specific content of their communications.

None of the cases cited by Jenkins on privilege protection for client identities contradicts the Fourth Circuit's analysis in *Search Warrant*, or is applicable otherwise. (Doc. 582 at 10–11.) As an initial matter, the issue is not whether telephone records in general are privileged. (Doc. 582 at 10.) And the case *In re Grand Jury Subpoenas Dated October 22, 1991 and November 1, 1991*, 959 F.2d 1158 (2d Cir. 1992), cited by Jenkins (Doc. 582 at 10), does not even purport to answer that question. Rather, in that case the Second Circuit held that a client's telephone records are not privileged merely because they are in the hands of the client's attorneys. *Id.* at 1161–62, 1165–66.

Nor does Jenkins cite any case holding that client identities are never privileged. For example, the case *In re Grand Jury Subpoena Served Upon Doe*, 781 F.2d 238 (2d Cir. 1986) (Doc. 582 at 10), merely states a general rule that “absent special circumstances, client identity and fee information are not privileged.” 781 F.2d at 247. In that case, however, the government

provided the names of twenty-one individuals who might be clients of the target attorney and sought to discover whether any of the identified persons paid fees to the attorney. *Id.* at 242. The attorney was not asked, as Liberty Counsel is in this case, to effectively provide a client list by producing a record of every person who paid a fee during a two-year period. In another case cited by Jenkins (Doc. 582 at 10), *Vingelli v. U.S. Drug Enforcement Agency*, 992 F.2d 449 (2d Cir. 1993), the government sought from an attorney the name of a client the government knew existed, and knew had provided money potentially in aid of the target of the government’s investigation. 992 F.2d at 451–53. In holding the identity of the client is not privileged, the court merely applied the general rule cited above, and concluded, “none of the recognized special circumstances here exist that would alter the unprivileged nature of the client's identity and fee transfer information.” *Id.* at 454.<sup>2</sup> The other cases cited by Jenkins are likewise inapposite. (Doc. 582 at 11 (citing *Lefcourt v. United States*, 125 F.3d 79 (2d Cir. 1997) (holding identity of known client, known to have paid fee to attorney, not privileged); *In re Shargel*, 742 F.2d 61 (2d Cir. 1984) (holding fee records of ten persons named by the government not privileged).

Unlike in any of the cases cited by Jenkins—all involving clients known to exist and known to have engaged in conduct relevant to the reasons for the discovery—Jenkins and SPLC have not identified even a shadow of a heretofore unnamed “intermediary,” with whom Liberty Counsel or

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<sup>2</sup> The *Vingelli* court also explained that the “special circumstances” under which known clients identities fall within the privilege must necessarily be determined case-by-case:

What those “special circumstances” are that would protect this information has not been precisely defined. What they are remains as enigmatic as the smile that Leonardo Da Vinci left us on the face of the Mona Lisa. In light of defense counsel's argument, our task is to examine the special circumstances rules to see if they apply in the present case.

992 F.2d at 450.

Lindevaldsen might have communicated about something possibly related to Lisa Miller, to justify their reverse lookup of every phone call and text message to and from three Liberty Counsel attorneys (and Lindevaldsen's husband) for a two-year period. Yet that is precisely what Jenkins and her SPLC attorneys want to do. (Mihet Decl. ¶¶ 17–18.) Indeed, every so-called intermediary Jenkins can point to as justification for her fishing expedition is a person already known to exist, subject to discovery, whose communications can be (and have been) queried for links to Liberty Counsel and Lindevaldsen, and whose known phone numbers can easily be searched for within the AT&T Records held by Liberty Counsel. To be sure, the disclosure demanded by Jenkins and SPLC presents circumstances analogous to the disclosure of all of an attorney's e-mail communications at issue in *Search Warrant*, effectively providing the attorney's litigation adversary a list of clients previously unknown to the adversary, whom the adversary may "become interested in investigating." 942 F.3d at 168–69. Under such special circumstances, the Fourth Circuit recognized the coverage of the attorney-client privilege and overarching client confidentiality interests to the client identities. *Id.* at 180. This Court should likewise conclude the special circumstances of this case require protection of the AT&T Records from unrestricted disclosure to Jenkins and SPLC.

**B. The AT&T Records Are Protected from Disclosure by the Work Product Doctrine.**

As the *Search Warrant* court recognized, the work product doctrine "is no less important" than the attorney-client privilege. 942 F.3d at 173. "The work product privilege serves to protect the interests of clients and their attorneys in preventing disclosures about the case by shielding the lawyer's mental processes from his adversary." *In re Grand Jury Subpoena*, 419 F.3d 329, 339 (5th Cir. 2005). The Court should reject Jenkins's argument that the work product doctrine does

not protect the AT&T Records from disclosure to Jenkins and her SPLC attorneys. (Jenkins Mot. 11–13.)

Because the AT&T Records contain all phone and text communications for three Liberty Counsel attorneys over two years, they provide a roadmap to the attorney’s mental processes in connection with public litigation. An organization with the inclination and resources to match calls and texts from the AT&T Records with the dates of publicly known litigation events involving Liberty Counsel or its attorneys could create a roadmap of their communications in connection with the events, potentially revealing the courses of contact with witnesses, experts, consultants, etc. The unfettered access demanded by Jenkins and SPLC, which has publicly vowed to “wreck” and “destroy” Liberty Counsel, would make such an inquiry possible.

**C. The AT&T Records are Protected from Disclosure by the First Amendment.**

The First Amendment protects Liberty Counsel and its attorneys, as well as its clients, potential clients, donors, supporters, and other constituents from assault on their rights to advocate for and associate with others in public advocacy. *See, e.g., NAACP v. Alabama*, 357 U.S. 449, 459–60 (1958) (“It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved.”); *id.* (holding party protected by the First Amendment from compelled disclosure of associational ties and advocacy); *Gibson v. Florida Legislative Invest. Comm.*, 372 U.S. 539, 543–44 (1963) (“Validation of the broad subject matter under investigation does not necessarily carry with it automatic and wholesale validation of all individual questions, subpoenas, and documentary demands” because the First Amendment protects from compelled disclosure of advocacy and associational interests); *Bates v. City of Little Rock*, 361 U.S. 516, 523-

25 (1960) (same); *N.Y. State Nat'l Organization For Women v. Terry*, 886 F.3d 1339,1355 (2d Cir. 1989) (noting that the First Amendment protects compelled disclosures of advocacy and associational interests during discovery where there is a threat of “economic reprisal, loss of employment, threat of physical coercion, or other manifestations of public hostility” and “harassment and threats to bodily harm”); *AFL-CIO v. FEC*, 3333 F.3d 168, 175 (D.C. Cir. 2003) (“The Supreme Court has long recognized that compelled disclosure of political affiliations and activities can impose just as substantial a burden on First Amendment rights as can direct regulation.”).

Thus,

**It is well-settled law that the First Amendment creates a qualified associational privilege from disclosure of certain information.** If the discovery request adversely affects an organization’s and/or its members’ mission of advocacy and chills their ability to freely speak or to associate, the associational privilege may attach. **Should there be any showing of reasonable probability that compelling disclosure will lead to some form or specter of harassment, threat, or reprisal of the organization and/or its members, such commanded disclosure runs afoul of the First Amendment**

*Shermin-Williams Co. v. Spitzer*, No. 1:04CV185(DNH/RFT), 2005 WL 2128938, \*4 (N.D.N.Y. Aug. 24, 2005) (emphasis added).

The associational privilege is clearly implicated by Jenkins’ and SPLC’s demand for unrestricted production of the AT&T Records, which can be used to identify all persons communicating with three Liberty Counsel attorneys by phone or text over three years. As shown above, Jenkins’ counsel, SPLC, has admitted that wrecking and destroying Liberty Counsel is its mission. If SPLC’s own statements concerning Liberty Counsel and its advocacy do not make out a *prima facie* showing of the requisite political hostility, harassment, or threats directed towards persons associated with Liberty Counsel, then nothing ever could. The First Amendment privilege

plainly protects Liberty Counsel, its attorneys, and its clients and other constituents from compelled, unrestricted disclosure of identifying information.

Contrary to Jenkins' contention (Jenkins Mot. 13–14), the Court's prior order (Doc. 395) does not address the First Amendment issue applicable to the AT&T Records. In the prior order, the Court addressed only the First Amendment rights of Liberty Counsel and Lindevaldsen. (Doc. 395 at 16–18.) Here, disclosure of the AT&T Records implicates the associational rights of all clients and other constituents whose identities may be discovered by Jenkins and her SPLC attorneys. As shown above, such disclosure—to an organization intent on destroying Liberty Counsel because of its advocacy positions— will undoubtedly have a chilling effect on all persons who expect and rely on confidentiality in contacting Liberty Counsel to receive legal assistance or otherwise participate in Liberty Counsel's legal and public advocacy.

**D. A Protective Order Will Not Ameliorate the Harm to Liberty Counsel and Its Clients and Constituents.**

Nor can the problem be solved by modifying the current protective order, as suggested by Jenkins and SPLC. (Doc. 582 at 13–15.) Even if Jenkins and SPLC promise not to use Liberty Counsel's client-identifying information outside of this litigation (*see, e.g.*, Doc. 410 at 4–5), the injury to client confidentiality has already occurred once the information is disclosed—Jenkins and SPLC cannot unsee or unlearn the client identities. As the *Search Warrant* court recognized, “[t]he review of such information . . . cannot be undone.” 942 F.3d at 183 n.21. Furthermore, even with a protective order limiting the use of the AT&T Records to this litigation, “[i]t may well be difficult for those agents [of SPLC subject to the protective order] to withhold from their superiors information . . . identified in the seized materials.” *Id.* Here, a protective order will still allow SPLC, the avowed ideological enemy of Liberty Counsel, to discover the identities of Liberty Counsel's clients, which discovery constitutes harm to the clients in and of itself.

**II. THE REQUESTED AT&T RECORDS ARE NOT DISCOVERABLE BECAUSE THE NECESSARY BURDEN OF SEPARATING AND PRODUCING ANY NONPRIVILEGED, HYPOTHETICALLY RELEVANT RECORDS OUTWEIGHS ANY REMOTELY POSSIBLE BENEFIT.**

As shown above, Jenkins and SPLC have not identified even a shadow of a heretofore unnamed “intermediary,” with whom Liberty Counsel or Lindevaldsen might have communicated about something possibly related to Lisa Miller, to justify their reverse lookup of every phone call and text message to and from three Liberty Counsel attorneys (and Lindevaldsen’s husband) for a two-year period. Yet that is precisely what Jenkins and her SPLC attorneys want to do. (Mihet Decl. ¶¶ 17–18.) Indeed, every so-called intermediary Jenkins can point to as justification for her fishing expedition is a person already known to exist, subject to discovery, whose communications can be (and have been) queried for links to Liberty Counsel and Lindevaldsen, and whose known phone numbers can easily be searched for within the AT&T Records held by Liberty Counsel. “A district court may refuse to allow additional discovery if it deems the request to be based on speculation as to what potentially could be discovered—that is merely a fishing expedition” *Seneca Beverage Corp. v. Healthnow N.Y., Inc.*, 200 F. App’x 25, 27 (2d Cir. 2006); *Nat’l Union Fire Ins. Co. of Pitts. v. Strooh Cos., Inc.*, 265 F.3d 97, 117 (2d Cir. 2001) (same).

Given the extensive discovery already undertaken by the parties—Liberty Counsel attorneys and staff have spent 500 hours in collecting and producing over 42,000 pages of documents to Jenkins and SPLC (Mihet Decl. (Doc. 580) ¶¶ 9–11)—the persistent lack of any identifiable footprint of any person or act Jenkins and SPLC could possibly hope to use to link Liberty Counsel and Lindevaldsen indicates that the possibility of extracting relevant matters from the AT&T Records is less than remote. Consequently, Jenkins cannot demonstrate any reasonable need for the records, or any reasonable importance to resolving the substantive issues before the Court. This virtually nonexistent benefit is outweighed by the overwhelming burden that would be

imposed on Liberty Counsel if it has to complete a privilege review of all 7,500 pages of the AT&T Records, which could require months of work by multiple reviewers. (Staver Decl. ¶ 11.) This extreme imbalance of burden compared to benefit puts the demanded AT&T Records outside the scope of Rule 26(b)(1).

Moreover, the presence of any useful discovery within the AT&T Records of Attorney Mihet and non-attorney Karl Lindevaldsen is especially implausible. As shown above, of all the numbers identified by Jenkins as associated with non-Liberty Counsel Defendants and alleged co-conspirators, Attorney Mihet was involved in just one call with Lisa Miller in May 2009, in the course of his covering one hearing during Liberty Counsel's legal representation of Miller prior to her September 2009 disappearance. (Mihet Decl. ¶¶ 12–14, 19–20.) Karl Lindevaldsen had no calls with any non-Liberty Counsel Defendant or alleged co-conspirator. (K. Lindevaldsen Decl. ¶ 5; Mihet Decl. ¶¶ 19–21.) Jenkins does not allege either is a co-conspirator, or otherwise make any serious argument of need for these records which could outweigh the extreme burden of reviewing the Mihet records for privilege, or that could otherwise justify rummaging through Karl Lindevaldsen's personal call logs. Such undeveloped arguments are waived. *See, e.g., Joshico v. Mukasey*, 299 Fed. App'x 29, 30 (2d Cir. 2008).

Furthermore, a two-year period of all attorney communications is a breathtakingly broad request, especially compared to other discovery requests by Jenkins in this case. As the Court may recall, Jenkins is seeking all communications of all Defendants for ten specific days around the time of the alleged kidnapping of Isabella. (Doc. 591 at 14.) The ten days of communications in that request swells to 730 days in the instant motion, without any identifiable need or justification. For the 70-fold expansion.

**III. EITHER OF THE TWO ALTERNATIVES PROPOSED BY LIBERTY COUNSEL AND REJECTED BY SPLC WOULD APPROPRIATELY BALANCE ANY PURPORTED NEED FOR INFORMATION IN THE AT&T RECORDS WITH PROTECTING THE LEGITIMATE PRIVILEGES ASSERTED BY LIBERTY COUNSEL.**

As shown in the Soto-Mihet Emails (Doc. 582-1), the Soto Declaration (Doc. 582-8), and the Mihet Declaration, Liberty Counsel offered two alternative proposals to accommodate Jenkins' purported need for information in the AT&T Records with Liberty Counsel's legitimate need to protect the privileges applicable to the records. First, Liberty Counsel offered to search the AT&T Records for any telephone numbers connected to the case that Jenkins provides. (Mihet Decl. ¶ 22; Doc. 582-1 at 7, 12.) This would have allowed Jenkins "to test whether [Liberty Counsel's] clients have communicated with others that have a connection with this case, while keeping the remainder of our privileged and protected (and non-relevant) information confidential." (Doc. 582-1 at 7.) SPLC Attorney Soto rejected this proposal, twice. (Doc. 582-1 4–6, 8–10.) Second, Liberty Counsel proposed "to redact the first six digits of all calls and texts, with any geographical information, and to produce only the last four digits for each entry (along with the time stamp)," which "would [have alleviated Liberty Counsel's] concerns about disclosing the identity of [its] clients, constituents and donors, while still permitting Plaintiff to cross-reference entries on this log with other information." (Mihet Decl. ¶ 18; Mihet-Soto E-mails, Ex. 1.) Attorney Soto rejected this proposal as well. (*Id.*)

One of the justifications offered by Attorney Soto in both rejections was the same work product argument rejected by the Fourth Circuit in *Search Warrant*. (Doc. 582-1 at 5; Mihet-Soto E-mails, Ex. 1, at 1.) *See* 942 F.3d at 169 ("[I]f it had provided search terms to the Law Firm, those terms would have revealed what the government was searching for.") This Court should likewise reject the argument.

Both of Liberty Counsel's proposals would strike an appropriate balance between burden and need for information under Rule 26(b)(1) standards. Jenkins's SPLC counsel's rejection of both proposals confirms that an unfettered opportunity to reverse-lookup any and all phone numbers of Liberty Counsel's clients, potential clients, donors, supporters, and constituents is exactly what Jenkins and SPLC want, which in turn confirms the need for upholding the legitimate privileges applicable to the AT&T Records.

**CONCLUSION**

For all of the foregoing reasons, the Jenkins Motion should be denied.

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/s/ Roger K. Gannam

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**CERTIFICATE OF SERVICE**

I hereby certify that on this November 28, 2020, I caused a true and correct copy of the foregoing to be electronically filed with this Court. Service will be effectuated on all counsel of record via this Court's ECF/electronic notice system.

/s/ Roger K. Gannam  
*Attorney for Defendants Liberty Counsel, Inc.  
and Rena M. Lindevaldsen*

**From:** Diego Soto <Diego.Soto@splcenter.org>  
**Sent:** Monday, November 23, 2020 1:51 PM  
**To:** Horatio Mihet  
**Cc:** Beth Littrell; Emily Joselson; flangrock; Jessica Stone; Maya Rajaratnam; Sarah Star; Scott McCoy; Tyler Clemons; Brooks McArthur; Cassie Parah; Anthony Duprey; Daniel Schmid; Roger Gannam; Adam Hochschild; Norman Smith; Richard Boyer; Toddy Ferguson; Michael Hirsh; Michael Tierney  
**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Compel

Harry,

Thanks for your proposal. Plaintiffs must decline, while the Court has before it the question of whether Defendants may withhold any portion of these records on the basis of privilege, privacy, or the First Amendment.

First, your proposal continues to assume that Defendants may withhold any portion of these records on the basis of privilege, privacy, or the First Amendment. Plaintiffs' motion to compel explains why Defendants may not do so, and your proposal does not attempt to explain why Defendants may do so.

Second, it is Defendants' burden to make specific redactions on the basis of objections and to justify those specific redactions. Defendants may not redact whole swaths of information based on blanket objections.

Third, as with the list proposal, your redaction proposal would require Plaintiffs to disclose work product and involve Defendants whenever Plaintiffs are interested in particular phone numbers.

Fourth, Plaintiffs do not need Defendants' records only to compare Defendants' records with other phone records to identify potential intermediaries; that is just one justification for production of the records. Plaintiffs also need Defendants' records to, for example, identify phone calls with particular phone numbers or phone calls at or around particular days and times, as Plaintiffs continue to review all the evidence in this case and to collect additional evidence.

Fifth, geographic information is relevant and important in this case about a kidnapping across state lines and international borders involving individuals in different states and countries.

Having not received any case law to the contrary from Defendants, Plaintiffs are confident the Court will require Defendants to produce the records in their entirety, thus obviating the need to negotiate partial productions and to argue about particular redactions.

Sincerely,  
Diego



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**To:** Diego Soto <Diego.Soto@splcenter.org>; Brooks McArthur <bmcArthur@jarvismcarthur.com>; Cassie Parah <cparah@jarvismcarthur.com>; Anthony Duprey <anthony@dupreylaw.com>; Daniel Schmid <daniel@lc.org>; Roger Gannam <rgannam@lc.org>; Adam Hochschild <adam@hochschildlaw.com>; Norman Smith <norman@normansmithlaw.com>; Richard Boyer <rickboyerlaw@gmail.com>; Toddy Ferguson

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**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Compel

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Diego:

As we have been working on the response to Plaintiff's motion to compel production of the ATT records, we have identified another potential resolution that would address our privilege and privacy concerns and Plaintiff's purported need to search the records for "intermediaries." We propose to redact the first six digits of all calls and texts, with any geographical information, and to produce only the last four digits for each entry (along with the time stamp). This would alleviate our concerns about disclosing the identity of our clients, constituents and donors, while still permitting Plaintiff to cross-reference entries on this log with other information.

We do not believe that such cross-referencing would produce any relevant results, but if it did, they would be minuscule in size compared with the current data set. We could then address individual hits, if any, in a much more reasonable and expedited fashion. If the hits on the last four digits would be actual hits (as to all seven digits), we would most likely produce that entry un-redacted. If there is a need for privilege assertion as to any such entries, we would be arguing about a very limited set, as opposed to hundreds of thousands of entries.

Please let us know by this afternoon whether this is workable to resolve Plaintiff's motion, without prejudice to raising issues later if and when they come up. If this is agreeable, we could begin redaction and production very quickly.

If you decline, please let us know specifically why this proposal is not adequate to address Plaintiff's purported discovery needs.

Regards,

**Horatio G. Mihet, Esq.\***

*Vice President of Legal Affairs and  
Chief Litigation Counsel*

**Liberty Counsel**

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**From:** Diego Soto <[Diego.Soto@splcenter.org](mailto:Diego.Soto@splcenter.org)>

**Sent:** Wednesday, October 28, 2020 5:39 PM

**To:** Brooks McArthur <[bmcarthur@jarvismcarthur.com](mailto:bmcarthur@jarvismcarthur.com)>; Cassie Parah <[cparah@jarvismcarthur.com](mailto:cparah@jarvismcarthur.com)>; Anthony Duprey <[anthony@dupreylaw.com](mailto:anthony@dupreylaw.com)>; Daniel Schmid <[daniel@lc.org](mailto:daniel@lc.org)>; Horatio Mihet <[hmihet@lc.org](mailto:hmihet@lc.org)>; Roger Gannam <[rgannam@lc.org](mailto:rgannam@lc.org)>; Adam Hochschild <[adam@hochschildlaw.com](mailto:adam@hochschildlaw.com)>; Norman Smith <[norman@normansmithlaw.com](mailto:norman@normansmithlaw.com)>;

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**Subject:** RE: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Compel

Attached is a courtesy copy of Exhibit 4.



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**Sent:** Wednesday, October 28, 2020 4:38 PM  
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**Subject:** FW: Activity in Case 2:12-cv-00184-wks Jenkins v. Miller et al Motion to Compel

Counsel,

Attached are courtesy copies of the documents just filed below. I will follow up with Exhibit 4, which is too large to include in this email.

Sincerely,  
Diego



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**Case Name:** Jenkins v. Miller et al

**Case Number:** [2:12-cv-00184-wks](#)

**Filer:** Janet Jenkins

Isabella Miller-Jenkins

**Document Number:** [582](#)

**MOTION to Compel *Defendants Liberty Counsel, Inc. and Rena Lindevaldsen to Produce AT&T Records and Request for Appropriately Expedited Consideration* filed by Janet Jenkins, Isabella Miller-Jenkins. (Attachments: # (1) Exhibit 1 - Soto-Mihet Emails, # (2) Exhibit 2 - AT&T Response Cover Sheet, # (3) Exhibit 3 - Lindevaldsen AT&T Logs, # (4) Exhibit 4 - Zodiates Trial Transcript Excerpts, # (5) Exhibit 5 - Zodiates Exhibits 41 & 44, # (6) Exhibit 6 - Order, Miller-Jenkins v. Miller-Jenkins, No. CH04-280 (Va. Cir. Ct. Frederick Cty. Sept. 3, 2008), # (7) Exhibit 7 - Docket Sheet, Miller-Jenkins v. Miller-Jenkins, No. 454-11-03 Rddm (Vt. Super. Ct.), # (8) Declaration of Diego A. Soto)(Soto, Diego)**

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**Document description:**Exhibit 1 - Soto-Mihet Emails

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**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1070689342 [Date=10/28/2020] [FileNumber=1360084-2] [dc7a0925952f66eefb94a2b6c2fa428f5fd241c602addcb06984d49a42e8f95c58c1b393425b8efa26da43b98d620fa90b1daf07f6efb98c18ac84602c57134e]]

**Document description:**Exhibit 3 - Lindevaldsen AT&T Logs

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1070689342 [Date=10/28/2020] [FileNumber=1360084-3] [5fc194280864ac0919e02751aa1d56b474ce531db98165832f06df583453fee724697954197d816366ade6c236c6c3773eda3ea7aa6279c39cbea45a9098f0e6]]

**Document description:**Exhibit 4 - Zodhiates Trial Transcript Excerpts

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1070689342 [Date=10/28/2020] [FileNumber=1360084-4] [65941e51bcce01f421fff1da415e6bad8875903673908f688bfc9f374fad37c17b255e8ab629dbfd3a17c2ff2c69b4217dd2cbd2604c1445fc9c41aac20b4cde]]

**Document description:**Exhibit 5 - Zodhiates Exhibits 41 & 44

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1070689342 [Date=10/28/2020] [FileNumber=1360084-5] [f56a1f331cb2058e0bde5bc5f4068602a61e22f7d3d01be45f5ba9dc9dcea69d905bd4f32704ee9a1519764bdd33c0030911252922aba32dc04a7b046ff0b490]]

**Document description:**Exhibit 6 - Order, Miller-Jenkins v. Miller-Jenkins, No. CH04-280 (Va. Cir. Ct. Frederick Cty. Sept. 3, 2008)

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1070689342 [Date=10/28/2020] [FileNumber=1360084-6] [604cecbc77ad24990f000bb5326a0f36c00c71e6eb0e490b5d0eace5b664bd11f14dafa14d3f2afa8ddd76ee1ef76db48fd643b1bb03b334bd1ae577c8d0972]]

**Document description:**Exhibit 7 - Docket Sheet, Miller-Jenkins v. Miller-Jenkins, No. 454-11-03 Rddm (Vt. Super. Ct.)

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1070689342 [Date=10/28/2020] [FileNumber=1360084-7] [ad8664a193f352148926f16b49535caa3105632e3f8fa9922354d84cf18fbedbf3ae17fafa1c066bfd165fec872aafb855e227fac0f57c6d3fbb114e7afc864]]

**Document description:**Declaration of Diego A. Soto

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1070689342 [Date=10/28/2020] [FileNumber=1360084-8] [0d5e9ed8e5a355e07a50d3696175e81e4ede8b4b820f232fcab1878006c76a84957a59f7d61024bd4e2e14ba063a38f40de9fda824b49f1103f0efac44b9814e]]

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

_____	)	
JANET JENKINS, et al.,	)	
	)	
Plaintiffs,	)	Docket No. 2:12-cv-00184
	)	
v.	)	
	)	
KENNETH L. MILLER, et al.,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF MATHEW D. STAVER IN OPPOSITION TO  
PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF AT&T RECORDS**

I, MATHEW D. STAVER, declare and state as follows:

1. I am over the age of 18 years. The statements in this declaration are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify to them, I would and could do so competently.
2. I submit this declaration in response and opposition to Plaintiff’s Motion to Compel Defendants Liberty Counsel, Inc. and Rena Lindevaldsen to Produce AT&T Records (Doc. 582, the “Jenkins Motion”).
3. On May 15, 2017, I executed an Affidavit in support of Defendants Mathew Staver, Rena Lindevaldsen, and Liberty Counsel’s Motion to Dismiss Plaintiffs’ Revised Second Amended Complaint (Doc. 238-2). I hereby adopt and reaffirm that Affidavit in its entirety.
4. I co-founded Defendant Liberty Counsel, Inc. in 1989 as a litigation, education, and policy organization. Liberty Counsel fulfills its mission through constitutional litigation, public policy education and advocacy, and many other projects and initiatives involving collaborative associations with individuals, churches, and other religious organizations.

5. From 1989 until May 2006, I was the President and General Counsel of Liberty Counsel. On or about May 15, 2006, I transitioned from President and General Counsel to my current position of Founder and Chairman of Liberty Counsel. In this position, among other duties and responsibilities, I appear of record in certain Liberty Counsel litigation matters throughout the country, in which I handle some trial-level motions and select appellate arguments. From May 15, 2006 until the end of 2014 I also served as Dean and Professor of Law for Liberty University School of Law (LUSOL).

6. During the time period of September 1, 2009 through September 30, 2010 (the “AT&T Records Period”) I was the user of the AT&T Wireless number 407-766-0928, on a wireless subscriber account belonging to Liberty Counsel. During the AT&T Records Period I used the same wireless number daily to communicate with Liberty Counsel clients, potential clients, donors, supporters, and other constituents regarding Liberty Counsel’s legal and public advocacy. With Liberty Counsel clients and potential clients, these daily communications included requesting and providing legal advice and representation. Liberty Counsel clients and potential clients often include minors, public school students and employees, military and government employees, and others with heightened privacy and confidentiality interests, seeking legal advice and counsel on issues involving religious liberty and free speech, as well as deeply personal matters such as pressure to obtain an abortion, sexuality, and other matters of self-determination. With Liberty Counsel donors, supporters, and other constituents these daily communications included requesting and providing financial, material, and strategic support and other information relating to Liberty Counsel’s legal and public advocacy activities. Individuals and organizations contact Liberty Counsel with the expectation and understanding that the nature of their highly sensitive and personal matters, and even the fact of their contacting Liberty Counsel, will be maintained in

the strictest confidence. Many of these individuals and organizations would be chilled in seeking legal advice or associating and advocating with Liberty Counsel to the point that they would not contact Liberty Counsel at all if they knew that either the nature or fact of their communications with Liberty Counsel could be disclosed publicly, and especially to ideological opponents of Liberty Counsel. Many such individuals and organizations have requested from me assurances that the fact and nature of their contact with Liberty Counsel will be maintained in the strictest confidence. These individuals and organization are entitled to rely on the privacy and confidentiality of their communications provided by the sacrosanct attorney-client privilege and/or the fundamental right of free association provided by the First Amendment.

7. During the same period, I used the same wireless number daily to communicate with LUSOL faculty, staff, and students. Some of these communications involved academic, disciplinary, counseling, and other confidential matters regarding law students who are entitled to rely on the privacy and confidentiality provided by the Family Educational Rights and Privacy Act (FERPA) and other federal law.

8. At all times Liberty Counsel has protected and maintained the confidentiality and privacy of its records of communications with, and identities of, all its clients, potential clients, and donors. Liberty Counsel has never published or otherwise disclosed any such associations without consent.

9. Many individuals and organizations that were Liberty Counsel clients, potential clients, donors, supporters, or other constituents during the AT&T Records Period remained associated with Liberty Counsel after the AT&T Records Period and remain so presently. Moreover, many such individuals and organizations are or were associated with Liberty Counsel in more than one category (*i.e.*, clients, potential clients, donors, supporters, or other constituents).

10. The AT&T telephone records demanded by the Jenkins Motion (the “AT&T Records”) would identify by telephone number the private and confidential identities of Liberty Counsel’s clients, potential clients, donors, supporters, and other constituents.

11. Determining which records of communications within the AT&T Records are subject to the attorney-client, associational, or other privilege or protection from disclosure would require multiple steps for each telephone number contained in the over 7,500 pages of Records: (1) each of at least three separate computer databases would have to be searched for each number to determine whether the number is linked to any person or organization in the database; then (2) each database would have to be searched for any matching name to determine all associations with Liberty Counsel and any privileges or protections from disclosure applicable to such identification; and (3) for any number that is not linked to any person or organization in Liberty Counsel’s databases, public or commercial reverse lookup services would have to be searched for each such number to determine all persons or organizations to which the number is linked; then (4) each Liberty Counsel database would have to be searched for any matching name to determine all associations with Liberty Counsel and any privileges or protections from disclosure applicable to such identification. Completing this review of the AT&T Records would require an inestimable number of hours of work, likely spanning months even with multiple persons dedicated to completing the review.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on November 25, 2020.

/s/ Mathew D. Staver  
Mathew D. Staver

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

_____	)	
JANET JENKINS, et al.,	)	
	)	
Plaintiffs,	)	Docket No. 2:12-cv-00184
	)	
v.	)	
	)	
KENNETH L. MILLER, et al.,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF RENA M. LINDEVALDSEN IN OPPOSITION TO  
PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF AT&T RECORDS**

I, RENA M. LINDEVALDSEN, declare and state as follows:

1. I am over the age of 18 years. The statements in this declaration are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify to them, I would and could do so competently.
2. I submit this declaration in response and opposition to Plaintiff’s Motion to Compel Defendants Liberty Counsel, Inc. and Rena Lindevaldsen to Produce AT&T Records (Doc. 582, the “Jenkins Motion”).
3. On May 15, 2017, I executed an Affidavit in support of Defendants Mathew Staver, Rena Lindevaldsen, and Liberty Counsel’s Motion to Dismiss Plaintiffs’ Revised Second Amended Complaint (Doc. 238-3). I hereby adopt and reaffirm that Affidavit in its entirety.
4. I began working at Liberty Counsel in January of 2003. I remained an employee of Liberty Counsel through July 31, 2006, at which time I became a full-time employee of Liberty University. During the 2005-2006 academic year, while working full-time for Liberty Counsel, I also served as an adjunct professor at Liberty University School of Law (LUSOL). When I became a full-time professor in August 2006, I continued a relationship with Liberty Counsel as an

independent contractor. All of my appearances and representation on behalf of Lisa Miller in Virginia and Vermont courts were done in my role as an independent contractor for Liberty Counsel. At no time did I represent any clients on behalf of Liberty University or LUSOL.

5. During the time period of September 1, 2009 through September 30, 2010 (the “AT&T Records Period”), I was a full-time professor at LUSOL, and worked for Liberty Counsel as an attorney independent contractor.

6. During the AT&T Records Period, I was the user of the AT&T Wireless number 434-386-7471, on a personal wireless subscriber account belonging to me. During this period, in addition to personal calls, I used the same wireless number to communicate with Liberty Counsel clients, potential clients, donors, supporters, and other constituents regarding Liberty Counsel’s legal and public advocacy. With Liberty Counsel clients and potential clients, these communications included requesting and providing legal advice and representation. Liberty Counsel clients and potential clients often include minors, public school students and employees, military and government employees, and others with heightened privacy and confidentiality interests, seeking legal advice and counsel on issues involving religious liberty and free speech, as well as deeply personal matters such as pressure to obtain an abortion, sexuality, and other matters of self-determination. Individuals and organizations contact Liberty Counsel with the expectation and understanding that the nature of their highly sensitive and personal matters, and even the fact of their contacting Liberty Counsel, will be maintained in the strictest confidence. Many of these individuals and organizations would be chilled in seeking legal advice or associating and advocating with Liberty Counsel to the point that they would not contact Liberty Counsel at all if they knew that either the nature or fact of their communications with Liberty Counsel could be disclosed publicly, and especially to ideological opponents of Liberty Counsel. Many such

individuals and organizations have requested from me assurances that the fact and nature of their contact with Liberty Counsel will be maintained in the strictest confidence. These individuals and organization are entitled to rely on the privacy and confidentiality of their communications provided by the sacrosanct attorney-client privilege and/or the fundamental right of free association provided by the First Amendment.

7. During the same period, I used the same wireless number to communicate with LUSOL faculty, staff, and students. Some of these communications involved academic, disciplinary, counseling, and other confidential matters regarding law students who are entitled to rely on the privacy and confidentiality provided by the Family Educational Rights and Privacy Act (FERPA) and other federal law.

8. During the AT&T Records Period, my husband, Karl Lindevaldsen, was the user of the AT&T Wireless number 540-850-3183, on a personal wireless subscriber account belonging to me. During this period, I never used Karl's wireless number to communicate with Lisa Miller, or with any person about Lisa Miller.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct to the best of my knowledge, information and belief.

Executed on November 25, 2020.

/s/ Rena M. Lindevaldsen  
Rena M. Lindevaldsen

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

	)	
JANET JENKINS, et al.,	)	
	)	
Plaintiffs,	)	Docket No. 2:12-cv-00184
	)	
v.	)	
	)	
KENNETH L. MILLER, et al.,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF HORATIO G. MIHET IN OPPOSITION TO  
PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF AT&T RECORDS**

I, HORATIO G. MIHET, declare and state as follows:

1. I am over the age of 18 years. The statements in this declaration are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify to them, I would and could do so competently.
2. I submit this declaration in response and opposition to Plaintiff’s Motion to Compel Defendants Liberty Counsel, Inc. and Rena Lindevaldsen to Produce AT&T Records (Doc. 582, the “Jenkins Motion”).
3. I joined Liberty Counsel on September 2, 2008 in the position of Senior Litigation Counsel. On June 13, 2014 I transitioned to my current position of Vice President of Legal Affairs and Chief Litigation Counsel. In this position, I lead Liberty Counsel’s attorneys in the pro bono, public interest litigation program on First Amendment and other Constitutional matters.
4. I am currently lead counsel in this case for Defendants Rena Lindevaldsen and Liberty Counsel, Inc.
5. The Jenkins Motion demands that Liberty Counsel produce the AT&T telephone records for Liberty Counsel attorneys Mathew D. Staver and myself, as well as former Liberty

Counsel attorney Lindevaldsen and her husband Karl, for a two-year period, comprising over 7,500 pages and over 163,000 calls and texts (the “AT&T Records”).

6. During the time period covered by the AT&T Records, September 1, 2009 through September 30, 2010 (the “AT&T Records Period”), I was the user of the AT&T Wireless number 407-766-0164, on a wireless subscriber account belonging to Liberty Counsel. During this period I used the same wireless number daily to communicate with Liberty Counsel clients, potential clients, donors, supporters, and other constituents regarding Liberty Counsel’s legal and public advocacy.

7. With Liberty Counsel clients and potential clients, these daily communications included requesting and providing legal advice and representation. Liberty Counsel clients and potential clients often include minors, public school students and employees, military and government employees, and others with heightened privacy and confidentiality interests, seeking legal advice and counsel on issues involving religious liberty and free speech, as well as deeply personal matters such as pressure to obtain an abortion, sexuality, and other matters of self-determination. With Liberty Counsel donors, supporters, and other constituents these daily communications included requesting and providing financial, material, and strategic support and other information relating to Liberty Counsel’s legal and public advocacy activities. Individuals and organizations contact Liberty Counsel with the expectation and understanding that the nature of their highly sensitive and personal matters, and even the fact of their contacting Liberty Counsel, will be maintained in the strictest confidence. Many of these individuals and organizations would be chilled in seeking legal advice or associating and advocating with Liberty Counsel to the point that they would not contact Liberty Counsel at all if they knew that either the nature or fact of their communications with Liberty Counsel could be disclosed publicly, and especially to ideological opponents of Liberty Counsel. Many such individuals and organizations have requested from me

assurances that the fact and nature of their contact with Liberty Counsel will be maintained in the strictest confidence. These individuals and organizations are entitled to rely on the privacy and confidentiality of their communications provided by the sacrosanct attorney-client privilege and/or the fundamental right of free association provided by the First Amendment.

8. Producing the AT&T Records as demanded by Jenkins would identify by telephone number the private and confidential identities of Liberty Counsel's clients, potential clients, donors, supporters, and other constituents.

9. Jenkins is represented in this case by the Southern Poverty Law Center (SPLC), which has unilaterally and pejoratively designated Liberty Counsel a "hate group," because it disagrees with Liberty Counsel's pro bono public interest advocacy. Moreover, the SPLC has also publicly made clear its intent to destroy Liberty Counsel for the First Amendment work and advocacy it provides to oppose initiatives and matters that the SPLC advocates:

Sometimes the press will describe [SPLC] as monitoring hate groups and so on. **I want to say plainly that our aim is to destroy these groups, to completely destroy them.**

\* \* \*

We see this as a political struggle, right . . . **We're trying to wreck these groups**, and we are very clear in our head, this—**we are trying to destroy them . . . as a political matter, to destroy them.**

*Mark Potok Speech 1*, YOUTUBE (Sept. 11, 2007), [https://www.youtube.com/watch?v=fnTz2yIJo\\_8&feature=reImfu](https://www.youtube.com/watch?v=fnTz2yIJo_8&feature=reImfu) (speech of SPLC Senior Fellow Mark Potok, discussing SPLC's purpose in attaching "hate group" label to certain organizations with which it disagrees) (emphasis added).

10. If Jenkins' Southern Poverty Law Center (SPLC) attorneys are permitted to have full access to the AT&T Records, and by extension to the identities of Liberty Counsel's clients, potential clients, donors, constituents and associates, all of these latter individuals would certainly

be far less likely to communicate with, associate with, or seek out and retain Liberty Counsel, which will not only deprive Liberty Counsel of future clients, but will also deprive Liberty Counsel of information necessary to the proper handling of its existing clients' matters to those existing clients' detriments. Liberty Counsel's public interest advocacy on issues of public importance would be similarly gravely impeded and harmed.

11. During the AT&T Records Period I did not have any other office or home telephone that I used for Liberty Counsel purposes and activities. The cell phone for which Jenkins and the SPLC seek my detailed records log was my exclusive means of transacting Liberty Counsel work and advocacy, and thus those records necessarily reveal the numbers (which can be used to determine the identity) of numerous Liberty Counsel clients, potential clients, donors, constituents and associates.

12. I had only minimal involvement in Liberty Counsel's representation of Lisa Miller in her custody dispute with Jenkins, attending just one hearing in the state court litigation in or around May 2009. I did not meet Lisa Miller in person, and I spoke with Lisa Miller by telephone only once during the course of Liberty Counsel's representation of her, around the time I attended the one hearing in her case.

13. I did not aid or assist Lisa Miller in leaving the country or remaining out of the country, or in any material way whatsoever, and I have no personal knowledge of anyone who participated in her leaving the country or keeping her out of the country. I never participated or acquiesced, directly or indirectly, in any plan, action, communication, or conspiracy to kidnap or remove Isabella Miller-Jenkins from the United States or from the jurisdiction of any court. I have never acted as an intermediary, to facilitate communications or otherwise, between any persons involved in any of these things. I had no knowledge, idea, or indication Lisa Miller intended to leave the country before she left.

14. I have searched the AT&T Records associated with my wireless number, and they reveal zero calls or texts to or from any of the non-Liberty Counsel parties and alleged co-conspirators in this case.

15. I was personally involved in, and coordinated and supervised, the initial response of Liberty Counsel and Lindevaldsen to Jenkins' subpoena to AT&T (Doc. 582-2 at 4-14 of 14) resulting in provision of the AT&T Records to Liberty Counsel, as well as the subsequent e-mail and telephone conferences with Jenkins' counsel regarding production of the AT&T Records, as partially reflected in the e-mail communications between counsel attached to the Jenkins Motion as Exhibit 1 (Doc. 582-1) and the Declaration of Diego Soto filed with the Jenkins Motion (Doc. 582-8).

16. As I wrote to Attorney Soto, early in our e-mail exchanges regarding the AT&T Records,

Plaintiff already has the telephone numbers used by all defendants and alleged "co-conspirators," or has the means to obtain those telephone numbers through focused discovery in this case. Therefore, Plaintiff could ask ATT only for communications between Lindevaldsen/Staver/LC and specific individuals that have a reasonable connection with this case, rather than the whole world at large. We would not oppose such a request.

(Doc. 582-1 at 20.)

17. Attorney Soto's account of the telephone conference between counsel (Soto Decl. Doc. 582-8 ¶ 10) excludes at least one significant detail: Attorney Soto made it clear that Jenkins and the SPLC want to have the unfettered ability to reverse lookup any and every telephone number contained in the AT&T Records to determine the identity of the owner or user of the number. They did not disclaim the means or ability to do so, using resources available to them.

18. Attorney Soto clarified Jenkins' counsel's stance in rejecting another later compromise attempt by Liberty Counsel and Lindevaldsen. In an e-mail to Attorney Soto on

November 23, to address Jenkins' purported need to search the AT&T Records for heretofore unidentified "intermediaries" (Doc. 582-1 at 4-5), I proposed "to redact the first six digits of all calls and texts, with any geographical information, and to produce only the last four digits for each entry (along with the time stamp). This would alleviate our concerns about disclosing the identity of our clients, constituents and donors, while still permitting Plaintiff to cross-reference entries on this log with other information." Attorney Soto rejected the proposal. Exhibit 1 is a true and correct copy of my e-mail exchange with Attorney Soto.

19. Jenkins has served over thirty subpoenas for records to non-parties in this case, from which I was able to ascertain that Jenkins has in her possession at least the following telephone number associations for Defendants and alleged co-conspirators:

Kenneth Miller	540-649-4875
Lisa Miller	(wireless) 434-444-2714 (landline) 434-525-3293
Timothy Miller	988-8798
Response Unlimited	540-941-8072 540-941-8074 540-943-0841 540-943-6721 540-943-7621 540-943-8109 540-943-8115 540-943-8117 540-943-8207 540-943-8310 540-241-5673 540-241-9887 540-649-1999
Philip Zodiates	540-943-5779 540-241-5673 540-241-9887 540-649-1999
Victoria Hyden	540-447-6720
Linda Wall	434-444-1797

Terry Miller	615-426-7310
Millmont Greenhouses	540-649-4875
Janet Stasulli	434-444-1797 434-444-2292 434-444-2714
Douglas Wright	540-247-3613
Kathie Zodiates	540-447-6720 540-241-9887

20. Searches of the AT&T Records for my wireless number revealed that it was not involved in any calls or texts with any of the foregoing numbers, except for one call with Lisa Miller's wireless number on May 8, 2009, in connection with the one hearing I attended in her case.

21. Searches of the AT&T Records for Karl Lindevaldsen's wireless number revealed that it was not involved in any calls or texts with any of the foregoing numbers.

22. Liberty Counsel can search the AT&T Records applicable to Rena Lindevaldsen's and Mathew Staver's wireless numbers for any or all of the foregoing numbers, along with any other numbers identified by Jenkins to be connected with her claims, and provide the results to Jenkins and SPLC subject to any applicable privileges or objections, as I previously offered to Attorney Soto. (Doc. 582-1 at 7, 12.)

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on November 27, 2020.

/s/ Horatio G. Mihet  
Horatio G. Mihet

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

_____	)	
JANET JENKINS, et al.,	)	
	)	
Plaintiffs,	)	Docket No. 2:12-cv-00184
	)	
v.	)	
	)	
KENNETH L. MILLER, et al.,	)	
	)	
Defendants.	)	
_____	)	

**DECLARATION OF KARL LINDEVALDSEN IN OPPOSITION TO  
PLAINTIFF’S MOTION TO COMPEL PRODUCTION OF AT&T RECORDS**

I, KARL LINDEVALDSEN, declare and state as follows:

1. I am over the age of 18 years. The statements in this declaration are true and correct, based upon my personal knowledge (unless otherwise indicated), and if called upon to testify to them, I would and could do so competently.
2. I submit this declaration in response and opposition to Plaintiff’s Motion to Compel Defendants Liberty Counsel, Inc. and Rena Lindevaldsen to Produce AT&T Records (Doc. 582, the “Jenkins Motion”).
3. I have never worked for Liberty Counsel, or for or on behalf of Lisa Miller.
4. During the time period of September 1, 2009 through September 30, 2010 (the “AT&T Records Period”), I was the user of the AT&T Wireless number 540-850-3183, on a personal wireless subscriber account belonging to my wife, Rena M. Lindevaldsen.
5. During the AT&T Records Period, I never used my wireless number to communicate with Lisa Miller, Isabella Miller-Jenkins, or with any Defendant or alleged co-conspirator in this case except for my wife.
6. The entirety of my contacts with Lisa Miller during the AT&T Records Period consisted of her joining the homeschool co-op in which I taught, although we never worked

together or had any substantive conversation, and she never assumed the teaching role for which she joined. Lisa Miller's involvement in the co-op was limited to showing up for approximately one week in late August or early September 2009, apparently to set up her classroom and otherwise prepare for the upcoming 2009–2010 school year, but she never came back. Her departure was sudden and unexpected because she gave no indication that she did not intend to participate in the co-op for the duration of the school year.

7. I did not communicate with Lisa Miller about her legal matters or issues.

8. While I may have been copied on e-mail communications regarding a 2008 prayer meeting involving Lisa Miller, and/or a 2008 Facebook fundraiser involving Lisa Miller, I have no recollection of receiving or responding to any such e-mail or attending any prayer meeting involving Lisa Miller. I did not participate in any fundraising activities for Lisa Miller.

9. I did not aid or assist Lisa Miller in leaving the country or remaining out of the country, or in any material way whatsoever, and I have no personal knowledge of anyone who participated in her leaving the country or keeping her out of the country. I never participated or acquiesced, directly or indirectly, in any plan or action or conspiracy to kidnap or remove Isabella Miller-Jenkins from the United States or from the jurisdiction of any court. I have never acted as an intermediary, to facilitate communications or otherwise, between any persons involved in any of these things. I had no knowledge, idea, or indication Lisa Miller intended to leave the country before she left.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

Executed on November 25, 2020.

/s/ Karl Lindevaldsen  
Karl Lindevaldsen