

No. COA25-420

EIGHTEENTH DISTRICT

NORTH CAROLINA COURT OF APPEALS

U.S. RIGHT TO KNOW,)

)

Plaintiff-appellant,)

)

v.)

)

From Orange County

THE UNIVERSITY OF NORTH)

)

CAROLINA AT CHAPEL HILL,)

)

Defendant-appellee.)

)

DEFENDANT-APPELLEE'S BRIEF

INDEX

TABLE OF AUTHORITIES.....iv

ISSUES PRESENTED2

INTRODUCTION2

STATEMENT OF THE CASE..... 4

STATEMENT OF THE GROUNDS FOR APPELLATE
REVIEW.....5

STATEMENT OF THE FACTS5

 A. The General Assembly enacts a university-
 research exemption to the Public Records
 Act.....5

 B. U.S. Right to Know submits public-records
 requests to the University concerning its
 coronavirus research 9

 C. U.S. Right to Know sues the University to
 compel the disclosure of withheld
 research records..... 11

 D. The superior court grants summary
 judgment in part to the University and in
 part to U.S. Right to Know 14

SUMMARY OF THE ARGUMENT..... 16

ARGUMENT.....20

 Standard of Review20

Discussion of Law	20
I. U.S. Right to Know’s Reading of the Statute Misconstrues the Term “Proprietary.”	21
II. U.S. Right to Know’s Reading of the Statute Misapplies Canons of Construction	30
A. If this Court affirms on the proprietary issue, the issue of whether the last- antecedent canon applies here is moot.....	32
B. The last-antecedent canon applies to the statute	34
III. U.S. Right to Know’s Reading of the Statute Is Not Required by the Liberal Construction of Public Records Act.....	38
CONCLUSION	41
CERTIFICATE OF COMPLIANCE.....	43
CERTIFICATE OF SERVICE.....	44
APPENDIX	App. 1

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Am. Tradition Inst. v. Rector & Visitors of Univ. of Va.</i> , 756 S.E.2d 435 (Va. 2014)	passim
<i>Appeal of Clayton-Marcus Co.</i> , 286 N.C. 215, 210 S.E.2d 199 (1974)	21
<i>Cape Fear River Watch v. N.C. Env'tl. Mgmt. Comm.</i> , 368 N.C. 92, 772 S.E.2d 445 (2015)	32, 33, 34
<i>Citizens Addressing Reassignment & Educ., Inc. v. Wake Cnty. Bd. of Educ.</i> , 182 N.C. App. 241, 641 S.E.2d 824 (2007)	32
<i>DTH Media Corp. v. Folt</i> , 374 N.C. 292, 841 S.E.2d 251 (2020)	38
<i>Elkin Tribune, Inc v. Yadkin Cnty. Bd. of Cnty. Comm'rs</i> , 331 N.C. 735, 417 S.E.2d 465 (1992)	39
<i>Facebook, Inc. v. Duguid</i> , 592 U.S. 395 (2021)	19, 34, 35, 36
<i>Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC</i> , 586 U.S. 296 (2019)	12
<i>Green v. Lewis</i> , 272 S.E.2d 181 (Va. 1980)	22, 23

<i>Highland Mining Co. v. W. Va. Univ. Sch. of Med.,</i> 774 S.E.2d 36 (W. Va. 2015)	40, 41
<i>Knight Publ'g Co. v. Charlotte-Mecklenburg Hosp.</i> <i>Auth.,</i> 172 N.C. App. 486, 616 S.E.2d 602 (2005)	39
<i>Lockhart v. United States,</i> 577 U.S. 347 (2016)	31
<i>Mashburn v. First Invs. Corp.,</i> 111 N.C. App. 398, 432 S.E.2d 869 (1993)	23, 27
<i>McCormick v. Hanson Aggregates Se., Inc.,</i> 164 N.C. App. 459, 596 S.E.2d 431 (2004)	38, 39
<i>Meiselman v. Meiselman,</i> 309 N.C. 279, 307 S.E.2d 551 (1983)	23
<i>Meritor, Inc. v. State ex rel. Bd. of Regents of Univ.</i> <i>of Okla.,</i> 451 P.3d 914 (Okla. Civ. App. 2019)	23
<i>Messer v. Town of Chapel Hill,</i> 346 N.C. 259, 485 S.E.2d 269 (1997)	32
<i>News & Observer Publ'g Co. v. State ex rel. Starling,</i> 312 N.C. 276, 322 S.E.2d 133 (1984)	39
<i>Piedmont Publ'g Co. v. City of Winston-Salem,</i> 334 N.C. 595, 434 S.E.2d 176 (1993)	39
<i>Philip Morris USA, Inc. v. N.C. Dep't of Revenue,</i> 386 N.C. 748, 909 S.E.2d 197 (2024).....	20, 31
<i>Reader v. Moody,</i> 48 N.C. 372 (1856)	24

S.E.T.A. UNC-CH, Inc. v. Huffines,
101 N.C. App. 292, 399 S.E.2d 340 (1991) 29

Stark ex rel. Jacobsen v. Ford Motor Co.,
365 N.C. 468, 723 S.E.2d 753 (2012)30

State v. Walker,
916 S.E.2d 54 (N.C. Ct. App. 2025)28, 37

U.S. Right to Know v. Univ. of Vt.,
255 A.3d 719 (Vt. 2021) 40

Virmani v. Presbyterian Health Servs. Corp.,
350 N.C. 449, 515 S.E.2d 675 (1999)39

Wells Fargo Bank, N.A. v. Am. Nat’l Bank & Tr. Co.,
250 N.C. App. 280, 791 S.E.2d 906 (2016) 29

Wilkie v. City of Boiling Spring Lakes,
370 N.C. 540, 809 S.E.2d 853 (2018)31

Statutes

Alaska Stat. § 14.40.453..... 8

Ariz. Rev. Stat. § 15-1640..... 8

Conn. Gen. Stat. § 1-210 8

Del. Code Ann. tit. 29, § 10002..... 8

Fla. Stat. § 1004.22..... 8

Ga. Code Ann. § 50-18-72 8

Idaho Code § 74-107 8

5 Ill. Comp. Stat. 140/7.....	8
Ind. Code § 5-14-3-4.....	8
Kan. Stat. Ann. § 45-221.....	8
Ky. Rev. Stat. Ann. § 61.878.....	8
La. Stat. Ann. § 44:4.....	8
Me. Stat. tit. 1, § 402	8
Md. Code Ann., Gen. Provis. § 4-346	8
Md. Code Ann., Gen. Provis. § 4-347.....	8
Mich. Comp. Laws § 390.1553.....	8, 9
Minn. Stat. § 13.3215	9
Miss. Code Ann. § 37-11-51.....	9
Mo. Rev. Stat. § 610.021.....	9
Neb. Rev. Stat. § 84-712.05	9
N.C. Gen. Stat. § 7A-27	5
N.C. Gen. Stat. §§ 66-152 to -162	24
N.C. Gen. Stat. § 66-152	25, 28
N.C. Gen. Stat. § 116-43.17	passim
N.C. Gen. Stat. §§ 132-1 to -11.....	5
N.C. Gen. Stat. § 132-1.1.....	6, 37

N.C. Gen. Stat. § 132-1.2	6, 28, 37
N.C. Gen. Stat. § 132-1.4	6
N.C. Gen. Stat. § 132-9	4
N.C. Gen. Stat. § 143B-1412.....	37
N.J. Stat. Ann. § 47:1A-1.1.....	9
Ohio Rev. Code Ann. § 149.43.....	9
Okla. Stat. tit. 51, § 24A.19	9
Or. Rev. Stat. § 192.345	9
65 Pa. Cons. Stat. § 67.708	9
S.C. Code Ann. § 30-4-40	9
S.D. Codified Laws § 1-27-1.5	9
Tenn. Code Ann. § 49-7-120.....	9
Tex. Educ. Code Ann. § 51.914.....	9
Utah Code Ann. § 63G-2-305	9
Va. Code Ann. § 2.2-3700 (2013)	40
Va. Code Ann. § 2.2-3705.4	9
Va. Code Ann. § 2.2-3705.4 (2013)	9, 22
Vt. Stat. Ann. tit. 1, § 317.....	9
Wash. Rev. Code § 42.56.270	9

Wyo. Stat. Ann. § 16-4-203..... 9

17 U.S.C. §§ 101-151124

17 U.S.C. § 102.....26

47 U.S.C. § 227..... 35

Session Laws

Act of Aug. 6, 2014, S.L. No. 2014-110,
2014 N.C. Sess. Laws 664 8

Act of Aug. 11, 2014, S.L. No. 2014-115,
2014 N.C. Sess. Laws 7006, 8, 23

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1 Am. Jur. 2d *Accession and Confusion* (2025).....24

Black’s Law Dictionary (12th ed. 2024)21, 25, 26, 29

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*Interpreting Law: A Primer on How To
Read Statutes and the Constitution* (2016) 35, 36

John Locke,
The Second Treatise on Civil Government
(Prometheus Books ed. 1986) (1690)24

Merriam-Webster’s Collegiate Dictionary
(11th ed. 2007).....22

Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012).....	36
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Ralph S. Baric, PhD, UNC Gillings School of Global Public Health, https://tinyurl.com/yhs625b4	10

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DEFENDANT-APPELLEE'S BRIEF

ISSUES PRESENTED

1. Did the superior court correctly hold that the word “proprietary” in section 116-43.17 refers to all protectable property interests?
2. Did the disclosure that the superior court ordered moot the issue of whether the last-antecedent canon applies to section 116-43.17?
3. Did the superior court correctly hold that the last-antecedent canon applies to section 116-43.17 of the General Statutes?

INTRODUCTION

This appeal calls on this Court to construe for the first time an important statute that exempts certain university research materials from disclosure under the Public Records Act.

In 2020 and 2021, the plaintiff in this case sent a series of public-records requests to the University of North Carolina at Chapel Hill. In its requests, the plaintiff sought documents relating to the University’s scientific research concerning coronaviruses. In response, the University produced more than 130,000 pages of documents to the plaintiff. But the University also withheld additional documents under the statutory exemption from disclosure for university research. After it did so, the plaintiff sued the University to compel the disclosure of these documents, arguing that the research exemption did not protect the documents.

The research exemption was added to our State's statutes in 2014. The General Assembly enacted the exemption several months after the Virginia Supreme Court issued a decision construing a similar exemption under Virginia law. *See Am. Tradition Inst. v. Rector & Visitors of Univ. of Va.*, 756 S.E.2d 435 (Va. 2014). In that decision, the court described the considerable harms that public universities would suffer if their research materials were made subject to disclosure, including "harm to university-wide research efforts, damage to faculty recruitment and retention, undermining of faculty expectations of privacy and confidentiality, and impairment of free thought and expression." *Id.* at 442.

In this appeal, the plaintiff asks this Court to adopt a flawed reading of our State's research exemption that would result in the exemption no longer fully shielding our State's public universities from these harms. The plaintiff specifically seeks rulings on two issues of statutory interpretation concerning the exemption, relying on arguments that the superior court below rejected.

This Court should not disturb the superior court's judgment. Well-settled rules of statutory construction show that the plaintiff's arguments fail. If this Court rejects the first of these two arguments, moreover, this

Court would not need to reach the second, because the specific disclosures that the superior court ordered below would moot this second issue.

The judgment of the superior court should be affirmed.

STATEMENT OF THE CASE

Plaintiff U.S. Right to Know began this lawsuit in 2022 by filing a complaint in Orange County superior court. (R pp 7-14) It asserted one claim against the University under section 132-9 of the Public Records Act, which allows persons who have allegedly been denied access to public records to sue “for an order compelling disclosure or copying.” N.C. Gen. Stat. § 132-9(a). In its complaint, U.S. Right to Know alleged that the University had wrongly withheld certain records relating to the University’s coronavirus research in response to records requests. (R p 8)

The University answered the complaint and then filed a motion for judgment on the pleadings. (R pp 35-55) The Honorable Alyson Adams Grine deferred ruling on the motion and appointed the Honorable Robert N. Hunter, Jr. as referee, to assess whether the withheld documents sought by U.S. Right to Know were protected from disclosure. (R pp 85-92)

The referee later submitted a report to the superior court. (R pp 100-04) After reviewing the report, the superior court converted the University’s

motion for judgment on the pleadings into a motion for summary judgment. The court then granted summary judgment in part to University and in part to U.S. Right to Know. The court ordered the University to produce certain additional documents, but not all of the documents that U.S. Right to Know believed should be disclosed. (R pp 153-56)

U.S. Right to Know appealed. (R pp 158-59)

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

The superior court's order granting summary judgment in part to the University and in part to U.S. Right to Know is a final judgment. This Court has appellate jurisdiction over appeals from final judgments in superior court. N.C. Gen. Stat. § 7A-27(b)(1).

STATEMENT OF THE FACTS

A. The General Assembly enacts a university-research exemption to the Public Records Act.

North Carolina's Public Records Act ensures that government records are accessible to the public. *See id.* §§ 132-1 to -11. The Act, however, also recognizes the need to balance the public's right to access with the protection of sensitive or confidential information. The Act accordingly

exempts a wide range of different kinds of public records from disclosure.

See, e.g., id. §§ 132-1.1, -1.2, -1.4.

In 2014, the General Assembly enacted a new exemption for certain public records that relate to university research. *See* Act of Aug. 11, 2014, S.L. No. 2014-115, sec. 52, § 116-43.17, 2014 N.C. Sess. Laws 700, 737. That exemption, codified at section 116-43.17 of the General Statutes, provides that:

Research data, records, or information of a proprietary nature, produced or collected by or for state institutions of higher learning in the conduct of commercial, scientific, or technical research where the data, records, or information has not been patented, published, or copyrighted are not public records as defined by G.S. 132-1.

Id. (emphasis added).

The General Assembly enacted this exemption shortly after the Virginia Supreme Court issued a decision interpreting a similar exemption under Virginia law. *See American Tradition Institute*, 756 S.E.2d at 441-42. In its decision, the Virginia Supreme Court explained that Virginia's exemption was needed to "protect public universities and colleges from being placed at a competitive disadvantage in relation to private universities," which are not subject to laws providing for disclosure of public records. *Id.*

To explain why the research records of public universities needed protection from disclosure, the court cited an affidavit submitted by the University of Virginia's provost. In the affidavit, the provost explained that the "compelled disclosure of [the] unpublished thoughts, data, and personal scholarly communications" of the faculty at Virginia's public universities would result in "a fundamental disruption of the norms and expectations which have enabled research to flourish." *Id.* at 442.

The provost also warned that public disclosure of research records would "gravely" harm the ability of faculty "to collaborate." *Id.* "Scientists at private institutions such as Duke," he explained, would "not feel that it is possible to continue collaborations with scientists at public institutions if doing [s]o mean[t] that every email or other written communication discussing data, preliminary results, drafts of papers, review of grant proposals, or other related activities" could be released "in contravention of scholarly norms and expectations of privacy and confidentiality." *Id.*

The provost further added that, without exemption from disclosure, the "recruitment of faculty to [public universities would] be deeply harmed." *Id.* Faculty would be reluctant to work at public universities, he explained, "if such faculty must fear that their unpublished communications with the

scientific collaborators and scholarly colleagues are subject to involuntary public disclosure.” *Id.*

Less than four months after the Virginia Supreme Court publicized these harms, our legislature enacted our State’s own research exemption into law. *See* 2014 N.C. Sess. Laws at 763. In doing so, it ensured that the economic growth and jobs created by the research activities of our State’s public universities would not be disrupted by the unwarranted disclosure of their work. The same week that our State’s research exemption was enacted, for instance, the General Assembly expressly recognized in another statute that North Carolina’s economic growth depends on the research performed at our State’s “top-tier research universities.” Act of Aug. 6, 2014, S.L. No. 2014-110, sec. 2.1, § 75-137(a)(1), 2014 N.C. Sess. Laws 664, 666-67, 674.

In enacting our research exemption, our legislature also joined dozens of other state legislatures that have also shielded university research in their states from public disclosure.¹ In drafting an exemption for North Carolina,

¹ *See* Alaska Stat. § 14.40.453; Ariz. Rev. Stat. § 15-1640; Conn. Gen. Stat. § 1-210(b)(1), (5); Del. Code Ann. tit. 29, § 10002(l); Fla. Stat. § 1004.22(2); Ga. Code Ann. § 50-18 72(a)(35); Idaho Code § 74-107(20)-(23); 5 Ill. Comp. Stat. 140/7(i)-(j); Ind. Code § 5-14-3-4(a)(6); Kan. Stat. Ann. § 45-221(a)(14), (20), (34); Ky. Rev. Stat. Ann. § 61.878; La. Stat. Ann. § 44:4(16); Me. Stat. tit. 1, § 402(3)(E); Md. Code Ann., Gen. Provis. §§ 4-346 to -347; Mich. Comp. Laws §

our legislature chose to enact statutory text that largely parallels the text used in Virginia's research exemption. *Compare* N.C. Gen. Stat. § 116-43.17, with Va. Code Ann. § 2.2-3705.4(4) (2013) (similarly protecting “[d]ata, records or information of a proprietary nature” from disclosure).

B. U.S. Right to Know submits public-records requests to the University concerning its coronavirus research.

U.S. Right to Know is an organization based in California that is “investigating the origins of COVID-19” and persons who have “associations with the Wuhan Institute of Virology.” (R p 7) As part of its investigation, it submitted eight public-records requests to the University in 2020 and 2021 seeking documents related to the work of the University’s faculty and their communications with persons at the Wuhan Institute. (R pp 8, 17-34, 134) The requests focused primarily on Dr. Ralph Baric. (R p 8) Dr. Baric is a

390.1553; Minn. Stat. § 13.3215; Miss. Code Ann. § 37-11-51(3); Mo. Rev. Stat. § 610.021(24); Neb. Rev. Stat. § 84-712.05(3); N.J. Stat. Ann. § 47:1A-1.1; Ohio Rev. Code Ann. § 149.43(A)(5); Okla. Stat. tit. 51, § 24A.19; Or. Rev. Stat. § 192.345(14); 65 Pa. Cons. Stat. § 67.708(b)(14); S.C. Code Ann. § 30-4-40(a)(14); S.D. Codified Laws § 1-27-1.5(3); Tenn. Code Ann. § 49-7-120; Tex. Educ. Code Ann. § 51.914(a); Utah Code Ann. § 63G-2-305(40)(a); Va. Code Ann. § 2.2-3705.4(A)(4); Vt. Stat. Ann. tit. 1, § 317(c)(23); Wash. Rev. Code § 42.56.270(1); Wyo. Stat. Ann. § 16-4-203(b)(iii).

microbiology and immunology professor, who has helped establish the University as a world leader in coronavirus research.²

The University complied with U.S. Right to Know's records requests, providing it with more than 130,000 pages of public records. (R p 135) These materials included, among other things, published research papers, related discussions of their content, and public-health policy recommendations provided to government advisory bodies. (R p 72; *see also* R pp 118-19)

The University also withheld 5,205 documents. (R p 135) Among these documents, 4,537 were withheld under section 116-43.17's research exemption to the Public Records Act. (R p 135) These withheld documents generally reflect four different kinds of records:

- Documents related to research grant applications, administration, and funding,
- unpublished draft manuscripts and presentations,
- documents related to the transfer of research materials among researchers or research institutions, and
- documents related to research project collaborations, including unpublished research data.

² See Ralph S. Baric, PhD, UNC Gillings School of Global Public Health, <https://tinyurl.com/yhs625b4> (last visited July 30, 2025).

(R p 135)

C. U.S. Right to Know sues the University to compel the disclosure of withheld research records.

In 2022, U.S. Right to Know sued the University, challenging the University's decision to withhold these documents. (R pp 7-14)

After the University moved for judgment on the pleadings, the superior court appointed a referee to review the contested documents in camera and assess if they should be disclosed. (R pp 85-88) The court ordered the parties, in working with the referee, to "keep any information concerning these records confidential." (R p 87) It also issued a protective order. (R pp 93-97)

After the referee's appointment, the parties submitted two rounds of briefing to the referee. (R pp 105-52) In their briefing, the parties disagreed on two principal issues with respect to the proper interpretation of section 116-43.17.

First, as noted, the statute protects certain "[r]esearch data, records, or information of a proprietary nature" from disclosure. N.C. Gen. Stat. § 116-43.17. In their briefing, the parties disagreed about the meaning of the word "proprietary" in this text, which the statute leaves undefined. *Id.* U.S. Right

to Know asserted that the word refers to trade secrets. (R pp 138-40) Under its reading of the statute, therefore, only documents that derive “commercial value from not being generally known or readily ascertainable” would be exempt from disclosure. (R p 139)

The University, on the other hand, argued that the word proprietary referred to any kind of “ownership interest.” (R p 147) The University thus maintained that the statute not only protects trade secrets, but also protects any information protected under any form of property right, such as, for example, documents that are subject to copyright. (R p 147)³

Second, the parties also disagreed about another issue concerning the proper construction of the statute. They disagreed about whether the phrase “of a proprietary nature” modifies only the word “information” or also

³ The statute, as noted, clarifies that it does not protect “copyrighted” material. N.C. Gen. Stat. § 116-43.17. The University explained below that the statute only requires disclosure of items with a *registered* copyright. (R pp 149-50) The federal Copyright Act confers copyright protection to all copyrightable materials immediately upon their creation. *Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 586 U.S. 296, 300-01 (2019). To initiate an infringement claim, however, a creator must have registered its copyright with the federal government. *Id.* at 301. Section 116-43.17 allows items with registered copyrights to be disclosed because they have already been made public through the registration process. It does not, however, require the disclosure of non-registered material protected by copyright.

modifies the words “data” and “records.” N.C. Gen. Stat. § 116-43.17. U.S. Right to Know took the position that the phrase modifies each of these three terms, such that data, records, and information are only protected if they are proprietary. (R p 112)

In contrast, the University maintained that the phrase only modifies the word information. To support its position, the University relied on a canon of statutory interpretation called the last-antecedent canon. Under that canon, qualifying phrases (like “of a proprietary nature”) are ordinarily only read to modify the word or phrase immediately preceding them (such as “information”). (R pp 122-23 n.5)

After receiving this briefing, the referee reviewed the withheld documents to assess whether the University had to produce any additional documents to U.S. Right to Know. In doing so, the referee analyzed the competing definitions of “proprietary” offered by the parties and determined which additional documents would have to be produced if the University’s definition or U.S. Right to Know’s definition were accepted. (R pp 101-03) Notably, however, the referee did not assess which documents would need to be produced if the parties’ competing arguments with respect to the last-antecedent canon were accepted. (See R pp 101-03)

The referee found that if the University's definition of the term proprietary were accepted, then the University would need to produce 251 additional documents to U.S. Right to Know, because those documents were not proprietary under the University's definition. (R p 103) He also found that if U.S. Right to Know's definition were accepted, 262 additional non-proprietary documents under its definition would have to be disclosed in full. Under that definition, another set of 2,691 documents would also need to be disclosed with redactions. (R p 103)

The referee declined to opine on which party's definition of proprietary should be accepted. He left that issue to the superior court. (R p 102)

D. The superior court grants summary judgment in part to the University and in part to U.S. Right to Know.

After the referee issued his report, the superior court held a hearing to consider the disputed issues of statutory interpretation that the parties had raised before the referee.

At that hearing, the University noted that the referee had not assessed which documents should be withheld if its arguments with respect to the last-antecedent canon were accepted. (T (10-18-2024) p 15) The University explained that if its arguments on this issue were accepted, then "a smaller

set” of documents than those that the referee had designated for disclosure would need to be provided to U.S. Right to Know. (T (10-18-2024) p 16)

After hearing argument from the parties, the superior court ruled for the University on the two contested issues. With respect to the dispute about the proper meaning of the term proprietary, the court held that the University had correctly interpreted its meaning. The word proprietary thus, the court explained, referred to any “information in which the owner has a protectable interest,” including records protected by copyright. (R p 155; *see also* T (10-18-2024) p 20)

With respect to the last-antecedent issue, the court also held that the canon applied to the statute and that the adjective proprietary in the statute thus only modified the word information. In other words, in the court’s view, research data and records are exempt from disclosure under the statute, regardless of whether they are proprietary or not. (R p 155; T (10-18-2024) p 20)

After ruling on these issues of statutory interpretation, the superior court ordered the University to produce additional documents to U.S. Right to Know. Although the superior court ruled for the University on the last-antecedent issue, it did not practically implement that holding through the

relief that it granted to U.S. Right to Know. The court ordered the University to produce all of the 251 documents that the referee had identified as non-proprietary under the University's definition. The court did so even though the referee had not assessed if any of those documents qualified as data or records that, if the University's last-antecedent argument were accepted, the University could withhold even if the documents were not proprietary. (R p 156; T (10-18-2024) p 20)

Consistent with the court's order, the University then produced the 251 withheld documents that the referee had designated as non-proprietary under the University's definition.

U.S. Right to Know filed this appeal. (R pp 158-59)

SUMMARY OF THE ARGUMENT

In its brief, U.S. Right to Know maintains that the superior court erred in two respects in interpreting section 116-43.17. It claims that the court wrongly construed the term "proprietary" in the statute to refer to all kinds of property interests, when the court should have read the term to refer to trade secrets alone. It also argues that the court wrongly applied the last-antecedent canon to the statute, thereby wrongly endorsing the withholding of non-proprietary research data and records.

For a variety of reasons, U.S. Right to Know fails to identify any basis for disturbing the judgment below.

To begin, U.S. Right to Know fails to show that the superior court erred in reading the term proprietary to refer to all property interests and not simply trade secrets. Where, as with section 116-43.17, a statute does not define a term, courts give the term its ordinary meaning. Here, dictionary definitions show that the ordinary meaning of proprietary refers to all kinds of property interests, not just trade secrets. This conclusion draws further support from the Virginia Supreme Court's decision in *American Tradition Institute*, where that court read Virginia's similar statute to refer to all rights customarily associated with ownership, title, and possession. 756 S.E.2d 435.

U.S. Right to Know tries to resist this conclusion by pointing to the definition of "proprietary information" in Black's Law Dictionary, which it claims equates this term with trade secrets. But Black's actually defines the term "proprietary information" to mean any information in which there is a protectable interest, which is consistent with the superior court's reading of the term proprietary. Reading the term proprietary to refer to trade secrets alone, moreover, would be mistaken for a number of additional reasons. For one thing, items only qualify as trade secrets if they have commercial value.

But the Virginia Supreme Court has already held that its statute, whose text closely follows ours, protects more than just items that have commercial value. The plain text of our statute supports this conclusion as well.

With respect to the last-antecedent issue, U.S. Right to Know also fails to show that the judgment below should be disturbed.

As an initial matter, if this Court affirms the superior court's holding with respect to the meaning of the term proprietary, then this Court would not need to address the last-antecedent issue, because that issue would then be moot. Issues become moot when their resolution would have no practical effect on a case. Here, the resolution of the last-antecedent issue would not have any practical effect because the superior court has already ordered the University to produce *all* documents that qualify as non-proprietary under the University's definition of proprietary. In doing so, it ordered for these documents to be produced, even if they constitute non-proprietary data or records that the University could withhold on the basis of its last-antecedent argument. Thus, if the superior court's holding on the proprietary issue were affirmed, U.S. Right to Know would have already received all the documents to which it would be entitled if its last-antecedent arguments were accepted, mooting this issue.

In any event, on the merits, the superior court correctly held that the last-antecedent canon applies to the statute. Our Supreme Court has held that under that canon, qualifying phrases should generally be read to modify the word or phrase immediately before them. A straightforward application of this canon here shows that the phrase “of a proprietary nature” only modifies “information,” not “data” or “records.” N.C. Gen. Stat. § 116-43.17.

To try to show otherwise, U.S. Right to Know argues that a decision of the U.S. Supreme Court, *Facebook, Inc. v. Duguid*, shows that its reading of the statute should be adopted. 592 U.S. 395 (2021). In that case, the U.S. Supreme Court interpreted a federal statute according to the so-called series-qualifier canon, under which a modifier at the end of a series is read to apply to the entire series. *Facebook*, however, does not help U.S. Right to Know. There, the U.S. Supreme Court applied that canon because the modifier at issue was set off from the preceding series by a comma. Here, in contrast, no comma sets off the modifier at issue from the preceding series.

As a final matter, U.S. Right to Know argues that its interpretation of the statute must be adopted because the Public Records Act is construed liberally to promote disclosure. While U.S. Right to Know is correct on that point, this general rule does not require that its specific arguments here be

accepted. The liberal construction of the Act does not displace the normal rules of statutory construction, which here show that U.S. Right to Know's arguments fail.

The judgment below should be affirmed.

ARGUMENT

Standard of Review

Below, the superior court granted summary judgment in part to the University and in part to U.S. Right to Know. In doing so, it ruled on several issues of statutory interpretation. “[M]atters of statutory interpretation . . . are reviewed de novo.” *Philip Morris USA, Inc. v. N.C. Dep’t of Revenue*, 386 N.C. 748, 751, 909 S.E.2d 197, 201 (2024).

Discussion of Law

U.S. Right to Know argues that the superior court erroneously construed section 116-43.17's use of the term proprietary and also wrongly applied the last-antecedent canon to the statute. Br. 5-15.

U.S. Right to Know, however, fails to identify any error in the superior court's judgment. Its judgment should therefore be affirmed.

I. U.S. Right to Know’s Reading of the Statute Misconstrues the Term “Proprietary.”

U.S. Right to Know first argues that the superior court, in construing section 116-43.17, adopted an overbroad definition of “proprietary.” *Id.* at 13-15. Below, the court rejected U.S. Right to Know’s argument that the term refers to trade secrets alone. The court rather held that the term refers to any “information in which the owner has a protectable interest.” (R p 155)

Section 116-43.17 does not itself define the word “proprietary.” N.C. Gen. Stat. § 116-43.17. When a statute like section 116-43.17 leaves terms undefined, courts give those words “their common and ordinary meaning.” *Appeal of Clayton-Marcus Co.*, 286 N.C. 215, 219, 210 S.E.2d 199, 203 (1974). Here, the ordinary meaning of the word “proprietary,” like the superior court correctly held, refers to *any* protectable property interest, including but not limited to trade secrets.

Consistent with the superior court’s holding, dictionary definitions show that the ordinary meaning of “proprietary” refers to all kinds of property interests. Black’s Law Dictionary, for instance, broadly defines “proprietary” to mean “[o]f, relating to, or holding as property.” *Proprietary*, *Black’s Law Dictionary* (12th ed. 2024). Merriam-Webster’s also similarly

defines “proprietary” to mean “of, relating to, or characteristic of a proprietor,” which is in turn defined to mean “a person who has the legal right or exclusive title to something” or “an interest (as control or present use) less than absolute and exclusive right.” *Proprietary, Proprietor, Merriam-Webster’s Collegiate Dictionary* (11th ed. 2007). Because these definitions do not define “proprietary” as referring to a specific kind of property alone, these definitions show that the term’s ordinary meaning broadly refers to *all* kinds of property interests.

The legislature’s intent that the term “proprietary” be construed, consistent with its ordinary meaning, to refer to all kinds of property interests is confirmed by another point. As noted, in 2014, the Virginia Supreme Court construed Virginia’s statute that, like our own, shields “information of a proprietary nature” from disclosure. *American Tradition Institute*, 756 S.E.2d at 438-39 (citing Va. Code Ann. § 2.2-3705.4(4) (2013)). In doing so, it held that the word “proprietary” in its statute refers to rights “customarily associated with ownership, title, and possession.” *Id.* at 439 (quoting *Green v. Lewis*, 272 S.E.2d 181, 186 (Va. 1980)).⁴ Virginia’s Supreme

⁴ See also *American Tradition Institute*, 756 S.E.2d at 439 (also defining proprietary rights broadly to mean those rights possessed by persons “who

Court thus read the term “proprietary” broadly, to refer to all kinds of property rights, not just a subset of property rights. *Id.* at 441-42.

Less than four months after it did so, our General Assembly enacted section 116-43.17. *See* sec. 52, § 116-43.17, 2014 N.C. Sess. Laws at 737, 763. In enacting the statute, our legislature chose to use statutory text that largely follows the text that the Virginia Supreme Court construed in *American Tradition Institute*. *See supra* pp 8-9. Given this similarity, the definition of “proprietary” adopted in *American Tradition Institute* helps show what section 116-43.17’s use of the same term means. Where, as here, our State’s statutes are “modeled” on the laws of other states, our State’s courts look to authority from other states to construe our statutes. *Mashburn v. First Invs. Corp.*, 111 N.C. App. 398, 402, 432 S.E.2d 869, 871 (1993).⁵

Thus, the term “proprietary” in section 116-43.17 refers to all kinds of property interests. Because it does so, the statute protects from disclosure

exercise[] dominion over a thing or property” and by those persons “who manage[] and control[]” (quoting *Green*, 272 S.E.2d at 186)).

⁵ *See also Meiselman v. Meiselman*, 309 N.C. 279, 294, 307 S.E.2d 551, 560 (1983) (looking to authority from “other states [that] have similar statutes” to construe a state statute); *Meritor, Inc. v. State ex rel. Bd. of Regents of Univ. of Okla.*, 451 P.3d 914, 923 n.17 (Okla. Civ. App. 2019) (construing the term “proprietary” in an Oklahoma disclosure exemption consistently with the Virginia Supreme Court’s decision in *American Tradition Institute*).

any items in which the University or its collaborators have any kind of property right. The statute accordingly protects items that constitute property because they are subject to copyright under federal law. *See* 17 U.S.C. §§ 101-1511. The same is true for items protected under state law by the Trade Secrets Protection Act. *See* N.C. Gen. Stat. §§ 66-152 to -162.⁶

But more generally, the statute also protects any documents that the University creates through its research work. A fundamental principle of property law, of course, is that when one uses one's own "labor" to create something, one gains "title" to what one has created. 1 Am. Jur. 2d *Accession and Confusion* § 1 (2025). Because the University and its employees create the documents that they generate through their research work, those research documents are their property and are protected from disclosure under the statute.⁷

⁶ The statute, as noted, does not shield copyrighted materials once a copyright has formally been registered. *See supra* p 12 n.3.

⁷ *See also Reader v. Moody*, 48 N.C. 372, 374 (1856) ("[T]he manufacturer . . . by the labor he has expended upon the article, acquires a title against all the world."); John Locke, *The Second Treatise on Civil Government* 20, § 26 (Prometheus Books ed. 1986) (1690) ("[H]e hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property.").

Despite the weight of authority that supports the University's reading of the statute, U.S. Right to Know tries to show in its brief that section 116-43.17 does not apply to all kinds of property interests. It maintains that the term "proprietary" should be construed to refer to only one type of property interest: trade secrets. Br. 13-14. As it notes, under our State's Trade Secrets Protection Act, trade secrets are protected only if they possess "commercial value." *Id.* at 14 (citing N.C. Gen. Stat. § 66-152(3)(a)).

U.S. Right to Know premises its argument with respect to trade secrets on a single dictionary definition. It notes that Black's Law Dictionary defines the term "proprietary information" to mean "[i]nformation in which the owner has a protectable interest. See TRADE SECRET." *Proprietary Information, Black's Law Dictionary* (12th ed. 2024).

For multiple reasons, this definition does not show that U.S. Right to Know's reading of the statute should be adopted.

First, this definition actually supports the University's reading of the statute, not U.S. Right to Know's. The definition, notably, does not define "proprietary information" to mean trade secrets. *Id.* It rather defines the term to mean "[i]nformation in which the owner has a protectable interest." *Id.* The definition is thus consistent with the superior court's holding that

the statute protects *any* “information in which the owner has a protectable interest,” not just trade secrets. (R p 155)

Black’s does, it is true, also direct readers to “[s]ee” its entry for “TRADE SECRET.” *Proprietary Information, Black’s Law Dictionary* (12th ed. 2024). But in doing so, Black’s at most simply identifies trade secrets as a related concept that constitutes one kind of proprietary information. The definition cannot reasonably be read otherwise. As a matter of black-letter law, after all, trade secrets are not the only kind of “information in which” persons can have “a protectable interest.” *Id.*; *see, e.g.*, 17 U.S.C. § 102 (providing “[c]opyright protection” to “original works of authorship”).

Second, reading the term “proprietary” to refer to trade secrets alone would also be mistaken given *American Tradition Institute*. 756 S.E.2d 435. In that case, the plaintiff argued (along the same lines as U.S. Right to Know argues here) that information could only qualify as proprietary if it conferred some “commercial” advantage. *Id.* at 441.

The Virginia Supreme Court, however, squarely rejected that argument. It held that adopting the plaintiff’s reading of proprietary as referring to “commercial competitive advantage” alone would be improper, because such a definition was “not consistent with the [legislature’s] intent

to protect public universities and colleges from being placed at a competitive disadvantage in relation to private universities and colleges.” *Id.* at 441-42.

“In the context of the higher education research exclusion,” it explained, “competitive disadvantage implicates not only financial injury, but also harm to university-wide research efforts, damage to faculty recruitment and retention, undermining of faculty expectations of privacy and confidentiality, and impairment of free thought and expression.” *Id.* at 442.

Adopting a construction of proprietary here that protects only items with commercial value, like U.S. Right to Know urges, would equally offend legislative expectations. Our legislature, as noted, adopted section 116-43.17 just months after *American Tradition Institute* was decided, using terms that largely follow those used in Virginia’s statute. *See supra* pp 6-9. Diverging from the Virginia Supreme Court’s construction of those terms would not respect the legislature’s understanding that when our State’s statutes are “modeled” on the laws of other states, they will be construed similarly to those laws. *Mashburn*, 111 N.C. App. at 402, 432 S.E.2d at 871.

Third, U.S. Right to Know’s attempt to conflate the statute’s reference to proprietary with trade secrets fails for a related reason: It is inconsistent with the plain text of the statute. Trade secrets, as noted, only qualify for

protection if they have “commercial value.” N.C. Gen. Stat. § 66-152(3)(a). Section 116-43.17, however, unmistakably provides that it protects more than just research that has commercial value. It expressly states that it applies to items generated “in the conduct of commercial, *scientific, or technical* research.” *Id.* § 116-43.17 (emphasis added).

Fourth, U.S. Right to Know’s interpretation of “proprietary” is also inconsistent with how the General Assembly has legislated with respect to trade secrets elsewhere. In a separate public-records exemption, for instance, it has expressly shielded privately-owned “trade secret[s]” held by public agencies from disclosure under the Public Records Act. *Id.* § 132-1.2(1). Thus, when the legislature means to refer to trade secrets alone, it expressly refers to just trade secrets. Given that practice, “[h]ad the legislature intended for” the statute here to protect trade secrets alone, it would have drafted its text to expressly provide so. *State v. Walker*, 916 S.E.2d 54, 57 (N.C. Ct. App. 2025).

Fifth, U.S. Right to Know’s reading of section 116-43.17 as protecting only trade secrets fails for another reason: The reading results in the statute providing no new protections to universities. Before the statute’s enactment in 2014, state law already shielded universities from the disclosure of their

own trade secrets under the Public Records Act. *See S.E.T.A. UNC-CH, Inc. v. Huffines*, 101 N.C. App. 292, 296, 399 S.E.2d 340, 343 (1991). Thus, if U.S. Right to Know's reading of the statute were accepted, section 116-43.17 would not have effectuated any change in the law. A reading with such a result necessarily fails: It is well established that when the legislature enacts a new statute, it means "for the new law to have a different meaning" than what the law provided for previously. *Wells Fargo Bank, N.A. v. Am. Nat'l Bank & Tr. Co.*, 250 N.C. App. 280, 285, 791 S.E.2d 906, 910 (2016).⁸

As a final matter, U.S. Right to Know argues that its interpretation of proprietary must be adopted because the University's reading "causes the exception to swallow the rule," by exempting "almost all university records relating in any way to research." Br. 15. But the University's construction does not provide a blanket exemption. The University, after all, has already

⁸ U.S. Right to Know's argument on this point suffers from another failing as well. It maintains, as noted, that the term "proprietary" not only modifies the word "information" in the statute, but also "records" and "data." N.C. Gen. Stat. § 116-43.17; Br. 10-13. The definition that it cites to try to show that proprietary refers to trade secrets, however, only relates to "proprietary information." *Proprietary Information, Black's Law Dictionary* (12th ed. 2024) (emphasis added). This definition, by its own terms then, does not speak to proprietary "records" or "data." N.C. Gen. Stat. § 116-43.17. U.S. Right to Know thus makes no showing at all that the term "proprietary," as applied to records and data, refers to trade secrets alone.

produced “over 130,000 pages of responsive documents” to U.S. Right to Know in response to its records requests. (R p 135)

Even if the University’s reading of the statute results in its research records receiving broad protection, moreover, that result simply serves to honor the legislature’s decision to use expansive language in drafting the exemption. When statutory language carries a “broad, general meaning,” the broad words chosen by the legislature should be given broad effect. *Stark ex rel. Jacobsen v. Ford Motor Co.*, 365 N.C. 468, 477-78, 723 S.E.2d 753, 759-60 (2012). By denying the words here their natural effect, U.S. Right to Know asks this Court to frustrate, not honor, legislative intent.

Thus, for all these reasons, the superior court correctly held that the statute not only protects trade secrets, but also reaches any items in which the University has a protectable property interest.

II. U.S. Right to Know’s Reading of the Statute Misapplies Canons of Construction.

In its brief, U.S. Right to Know also argues that the superior court erred in applying the last-antecedent canon to section 116-43.17. Br. 10-13.

The last-antecedent canon is a longstanding rule of statutory interpretation, which the U.S. Supreme Court has applied “from [its] earliest

decisions to [its] more recent.” *Lockhart v. United States*, 577 U.S. 347, 351 (2016). Just last year, moreover, our own Supreme Court reaffirmed that our State’s statutes should also be construed according to “the doctrine of last antecedent.” *Philip Morris*, 386 N.C. at 757, 909 S.E.2d at 204.

Our Supreme Court has held that, under the last-antecedent canon, “qualifying words, phrases, and clauses ordinarily are to be applied to the word or phrase immediately preceding.” *Id.* (quoting *Wilkie v. City of Boiling Spring Lakes*, 370 N.C. 540, 548-49, 809 S.E.2d 853, 859 (2018)). They should not, on the other hand, be “extend[ed] to . . . others more remote.” *Id.*; see also *Lockhart*, 577 U.S. at 351 (describing canon in similar terms).

Below, in a straightforward application of this canon, the superior court held that the qualifying clause “of a proprietary nature” in section 116-43.17 only modifies the word that immediately precedes it: “information.” (R p 155 (quoting N.C. Gen. Stat. § 116-43.17)) The court also correspondingly held that the phrase did not modify the words in the statute that were more remote: “data” or “records.” (R p 155 (quoting N.C. Gen. Stat. § 116-43.17))

For two principal reasons, the superior court’s ruling on this issue provides no basis for reversing its judgment.

A. If this Court affirms on the proprietary issue, the issue of whether the last-antecedent canon applies here is moot.

First, if this Court affirms the superior court's holding with respect to the meaning of the term proprietary, appellate review of the last-antecedent issue would not be needed, because the dispute between the parties about the applicability of this canon would be moot.

Issues become moot when, over the course of litigation, it develops that ruling on the questions originally in controversy would not "have any practical impact" on the outcome of a case. *Cape Fear River Watch v. N.C. Env'tl. Mgmt. Comm.*, 368 N.C. 92, 100, 772 S.E.2d 445, 450 (2015). Courts should generally not rule on moot issues, because doing so results in the issuance of advisory opinions that merely "determine abstract propositions of law." *Id.* at 97-98, 772 S.E.2d at 449 (quoting *Messer v. Town of Chapel Hill*, 346 N.C. 259, 260, 485 S.E.2d 269, 270 (1997)).⁹

Here, if the superior court's holding on the meaning of the term proprietary is affirmed, this Court would need not address whether the last-

⁹ Mootness is assessed on an issue-by-issue basis. *See, e.g., Citizens Addressing Reassignment & Educ., Inc. v. Wake Cnty. Bd. of Educ.*, 182 N.C. App. 241, 245-46, 641 S.E.2d 824, 827-28 (2007) (holding that certain "issues [were] moot," while others were "not").

antecedent canon applies to section 116-43.17, because doing so would not “have any practical impact” on the outcome of this case. *Id.* at 100, 772 S.E.2d at 450. Below, the referee made no assessment about which documents should be withheld if the University were correct that the canon applied to the statute. (See R pp 101-02) The referee rather, without assessing if the documents at issue qualified as data, records, or information, simply determined which of them should be withheld if the parties’ competing “definitions” of the word “proprietary” were accepted. (R p 102)

The superior court then, despite its holding with respect to the last-antecedent canon, ordered the University to produce *all* documents that the referee had designated as not “proprietary” under the University’s proposed “definition” of proprietary. (R p 102; *see also* R p 156) In line with the court’s order and the referee’s report, the University has since produced all such documents to U.S. Right to Know, no matter whether the documents qualify as non-proprietary data or records that could have been withheld if the canon applied.

Given this production, if the superior court is affirmed with respect to the proprietary issue, then ruling on the last-antecedent issue would not “have any practical impact” on this case’s outcome. *Cape Fear*, 368 N.C. at

100, 772 S.E.2d at 450. In such circumstances, U.S. Right to Know would have already received all of the documents that could have been withheld if the canon applied, mooted this issue. (See R pp 101-02, 156)¹⁰

B. The last-antecedent canon applies to the statute.

Second, if this Court were to reach the merits of this issue, the last-antecedent canon applies to section 116-43.17 in any event.

In trying to show otherwise, see Br. 10-13, U.S. Right to Know argues that section 116-43.17 should be construed in line with the U.S. Supreme Court's decision in *Facebook, Inc. v. Duguid*, where that Court applied another canon: the so-called "series-qualifier" canon. *Id.* at 10 (citing 592 U.S. 395). Under that canon, "a modifier at the end of a list 'normally applies to the entire series.'" *Id.* (quoting *Facebook*, 592 U.S. at 402).

The state statute at issue here, however, is materially different from the federal statute considered in *Facebook*. The Court in *Facebook* construed a statute that sought to limit telemarketing robocalls by banning automatic

¹⁰ On the other hand, if this Court reversed the superior court's holding on the proprietary issue, additional documents may need to be disclosed on remand. See *supra* p 14. If additional documents might need to be disclosed, the issue of whether the last-antecedent canon shields them from disclosure would not be moot.

telephone dialing systems known as autodialers. *Facebook*, 592 U.S. at 399-400 (discussing 47 U.S.C. § 227). That statute defined autodialer to mean a device that could “store or produce telephone numbers to be called, using a random or sequential number generator,” and that could “dial such numbers.” 47 U.S.C. § 227(a)(1). The specific dispute about this statute in *Facebook* was whether the phrase “using a random or sequential number generator” modified the verb “produce” alone, or instead modified both of the verbs “store” and “produce.” *Facebook*, 592 U.S. at 402.

Relying on the series-qualifier canon, the Court held that the phrase modified both. To support this holding, however, the Court observed that “a comma” preceded the modifying phrase at issue (“using a random or sequential number generator”). *Id.* at 403. This comma was important, the Court held, because a “qualifying phrase separated from antecedents by a comma is evidence that the qualifier is supposed to apply to *all the antecedents* instead of only to the immediately preceding one.” *Id.* at 403-04 (emphasis added) (quoting William N. Eskridge, Jr., *Interpreting Law: A Primer on How To Read Statutes and the Constitution* 67-68 (2016)).¹¹

¹¹ See also 2A Norman J. Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 47:33 (rev. 7th ed. 2014) (similarly explaining

Here, however, in contrast to *Facebook*, no comma separates the qualifying phrase in section 116-43.17 from its antecedent. In other words, the statute states that it applies to “data, records, or information of a proprietary nature.” N.C. Gen. Stat. § 116-43.17. It does *not* state that it applies to “data, records, or information[,] of a proprietary nature,” *id.*, as it would if proprietary had been meant to apply to the entire series, as in *Facebook*. *Cf.* 592 U.S. at 403. Thus, the “evidence” in *Facebook* that showed that “the qualifier is supposed to apply to all the antecedents” is lacking here. *Id.* at 403 (quoting Eskridge, *supra*, 67-68). For that reason, the rule of the last-antecedent applies, with the result that the word “proprietary” in the statute only modifies the word “information.” N.C. Gen. Stat. § 116-43.17.

Another point, moreover, underscores the General Assembly’s intent to make “proprietary” modify “information” alone. *Id.* There are other statutory provisions enacted by the legislature that exempt proprietary materials from disclosure under the Public Records Act. In those provisions,

that a “qualifying phrase separated from antecedents by a comma is evidence that the qualifier is supposed to apply to all the antecedents instead of only to the immediately preceding one”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 161 (2012) (explaining that “[p]roperly placed commas . . . cancel the last-antecedent canon”).

when the legislature has wanted the word “proprietary” to modify an entire series of words, it has placed the word “proprietary” *at the beginning* of the series. One provision of the Act, for instance, specifies that certain “proprietary design work or work product” provided to the Department of Transportation is exempt from disclosure. *Id.* § 132-1.2(9).¹²

Thus, for section 116-43.17, “[h]ad the legislature intended for” the word proprietary to modify the entire series, “it could have” written section 116-43.17 differently, as it has “in numerous other statutes.” *Walker*, 916 S.E.2d at 57. It could have done so by placing the word proprietary at the start of the series, such that the statute would have stated that “proprietary research data, records, and information” are not public records. It chose, however, not to do so. This Court should give effect to the legislature’s decision to place the word proprietary not at the start, but at the end of the series, which brings section 116-43.17 under the last-antecedent canon.

¹² See also N.C. Gen. Stat. § 132-1.1(g) (providing that “[p]roprietary computer code written by and for use by an agency of North Carolina government or its subdivisions is not a public record”); *id.* § 143B-1412 (providing that “[a]ll proprietary information submitted to the 911 Board or the State Auditor is . . . not subject to disclosure” under the Act).

U.S. Right to Know thus fails to show that the superior court's holding on the last-antecedent canon justifies reversal of the judgment below.

III. U.S. Right to Know's Reading of the Statute Is Not Required by the Liberal Construction of Public Records Act.

U.S. Right to Know finally argues that this Court must adopt its reading of section 116-43.17 because the Public Records Act is liberally construed to allow for disclosure of public records. See Br. 9-10, 12.

U.S. Right to Know is correct that the Act is "liberally construed to ensure that governmental records be open" and that, as a result, claimed exemptions from disclosure are "construed narrowly." *DTH Media Corp. v. Folt*, 374 N.C. 292, 300-01, 841 S.E.2d 251, 257-58 (2020). For that reason, this Court has declined to recognize exemptions from disclosure that, unlike here, are not expressly created by statute. See, e.g., *McCormick v. Hanson Aggregates Se., Inc.*, 164 N.C. App. 459, 471, 596 S.E.2d 431, 438 (2004) (rejecting claimed exemption from disclosure based on "common law").

U.S. Right to Know is wrong, however, that the liberal construction of the Act requires this Court to adopt its reading of section 116-43.17. The liberal construction of the Act does not displace the normal tools of statutory construction that courts routinely use to determine the meaning of

statutes. In construing exemptions, this Court has therefore rejected overly “narrow definition[s]” of statutory terms that were “not consistent with rules of statutory construction.” *Knight Publ’g Co. v. Charlotte-Mecklenburg Hosp. Auth.*, 172 N.C. App. 486, 492, 616 S.E.2d 602, 607 (2005). And our Supreme Court has similarly applied “canon[s] of construction” to ascertain legislative intent and hold that records were exempt from disclosure under the Act. *Piedmont Publ’g Co. v. City of Winston-Salem*, 334 N.C. 595, 598, 434 S.E.2d 176, 177 (1993). Thus, despite the “liberal access to public records” under the Act, our State’s courts have repeatedly applied the normal tools of statutory construction to hold that records are exempt from disclosure under the Act. *Knight Publishing*, 172 N.C. App. at 489, 616 S.E.2d at 605.¹³

As shown above, moreover, those tools here show that the General Assembly meant to exempt the documents that U.S. Right to Know seeks in

¹³ See also *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 463-65, 515 S.E.2d 675, 685-86 (1999) (rejecting arguments for limiting scope of exemption from disclosure for medical records); *Elkin Tribune, Inc v. Yadkin Cnty. Bd. of Cnty. Comm’rs*, 331 N.C. 735, 736-38, 417 S.E.2d 465, 466-67 (1992) (rejecting arguments for limiting scope of exemption from disclosure for personnel records); *News & Observer Publ’g Co. v. State ex rel. Starling*, 312 N.C. 276, 278-84, 322 S.E.2d 133, 135-39 (1984) (rejecting arguments for limiting scope of exemption from disclosure for SBI records); *McCormick*, 164 N.C. App. at 466-68, 596 S.E.2d at 436 (rejecting arguments for limiting scope of exemption from disclosure for criminal-investigation records).

this lawsuit from disclosure. See *supra* pp 21-31, 34-38. As a result, the liberal construction of the Act does not require that U.S. Right to Know's reading of section 116-43.17 be adopted.

This conclusion is buttressed by authority from elsewhere. Like our Public Records Act, Virginia's act is also "liberally construed" to promote disclosure, while its exemptions from disclosure are "narrowly construed." *American Tradition Institute*, 756 S.E. 2d at 440 (emphasis removed) (quoting Va. Code Ann. § 2.2-3700(B) (2013)). Nonetheless, as noted, in *American Tradition Institute*, the Virginia Supreme Court rejected as "too narrow" the definition of "proprietary" that the plaintiff in that case asked it to adopt. *Id.* at 441. The liberal construction of Virginia's act therefore did not require Virginia's courts to adopt an unnaturally narrow definition of "proprietary." This Court is similarly unconstrained in interpreting section 116-43.17 consistent with the normal rules of statutory construction, which show that U.S. Right to Know's reading of the statute should be rejected.¹⁴

¹⁴ See also *U.S. Right to Know v. Univ. of Vt.*, 255 A.3d 719, 725 (Vt. 2021) (observing that the Vermont Public Records Act is construed "as liberally as possible in favor of disclosure," but holding that research records were exempt from disclosure because "there are limits to how generously . . . the Act" can be construed); *Highland Mining Co. v. W. Va. Univ. Sch. of Med.*, 774 S.E.2d 36, 47 (W. Va. 2015) (holding that statutory exemption protected

CONCLUSION

The University respectfully requests that the judgment of the superior court be affirmed.

This 30th day of July, 2025.

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N.C. R. App. P. 33(b) Certification:
I certify that the attorneys listed below
have authorized me to list their name
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research records from disclosure, even though the West Virginia Freedom of Information Act is “liberally construed”).

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CERTIFICATE OF COMPLIANCE

I certify that the attached brief complies with Appellate Rule 28(j)(2). The brief uses 14-point Constantia type. According to Microsoft Word, the body of the brief (including footnotes and citations) contains fewer than 8,750 words.

This 30th day of July, 2025.

/s/ James W. Doggett
James W. Doggett

CERTIFICATE OF SERVICE

I certify that today, I caused the attached brief to be served on all counsel of record by email to the following addresses:

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This 30th day of July, 2025.

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CONTENTS OF APPENDIX

Statutes

N.C. Gen. Stat. § 66-152App. 3

N.C. Gen. Stat. § 116-43.17App. 5

N.C. Gen. Stat. § 132-1.1(g) App. 6

N.C. Gen. Stat. § 132-1.2(1), (9) App. 6

N.C. Gen. Stat. § 132-9(a)App. 7

N.C. Gen. Stat. § 143B-1412 App. 8

Va. Code Ann. § 2.2-3700 (2013) App. 9

Va. Code Ann. § 2.2-3705.4(4) (2013)..... App. 10

17 U.S.C. § 102 App. 12

47 U.S.C. § 227(a)(1) App. 14

Session Laws

Act of Aug. 6, 2014, S.L. No. 2014-110, sec. 2.1,
2014 N.C. Sess. Laws 664, 666-67, 674.....App. 15

Act of Aug. 11, 2014, S.L. No. 2014-115, sec. 52,
2014 N.C. Sess. Laws 700, 737, 763 App. 19

Transcript

October 18, 2024 Hearing Transcript

Excerpts from Hearing

(T pp 10-21)App. 22

North Carolina General Statutes

Chapter 66

Commerce and Business

Article 24

Trade Secrets Protection Act.

§ 66-152. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) “Misappropriation” means acquisition, disclosure, or use of a trade secret of another without express or implied authority or consent, unless such trade secret was arrived at by independent development, reverse engineering, or was obtained from another person with a right to disclose the trade secret.
- (2) “Person” means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or any other legal or commercial entity.
- (3) “Trade secret” means business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:
 - a. Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and

- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The existence of a trade secret shall not be negated merely because the information comprising the trade secret has also been developed, used, or owned independently by more than one person, or licensed to other persons.

- App. 5 -

Chapter 116

Higher Education

Article 1

The University of North Carolina

Part 5

Miscellaneous Provisions.

§ 116-43.17. Confidentiality of research data, records, and information of a proprietary nature.

Research data, records, or information of a proprietary nature, produced or collected by or for state institutions of higher learning in the conduct of commercial, scientific, or technical research where the data, records, or information has not been patented, published, or copyrighted are not public records as defined by G.S. 132-1.

Chapter 132

Public Records.

§ 132-1.1. Confidential communications by legal counsel to public board or agency; State tax information; public enterprise billing information; Address Confidentiality Program information.

...

- (g) Public Agency Proprietary Computer Code.—Proprietary computer code written by and for use by an agency of North Carolina government or its subdivisions is not a public record as defined in G.S. 132-1.

...

§ 132-1.2. Confidential information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

- (1) Meets all of the following conditions:
- a. Constitutes a “trade secret” as defined in G.S. 66-152(3).
 - b. Is the property of a private “person” as defined in G.S. 66-152(2).
 - c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.

- d. Is designated or indicated as “confidential” or as a “trade secret” at the time of its initial disclosure to the public agency.

...

- (9) Reveals proprietary design work or work product included in a proposal that is submitted to the Department of Transportation for consideration, or any Department intra-agency communications related to the review of a proposal, during a competitive bid process. For the purposes of this subdivision, the competitive bid process is completed upon contract award. Proprietary design work, work product, or intra-agency communications that are otherwise public records pursuant to G.S. 132-1 are no longer confidential and subject to disclosure upon contract award.

§ 132-9. Access to records.

- (a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

Chapter 143B

Executive Organization Act of 1973

Article 15

Department of Information Technology

Part 10

Emergency Telephone Service.

§ 143B-1412. Proprietary information.

All proprietary information submitted to the 911 Board or the State Auditor is confidential. Proprietary information submitted pursuant to this Part is not subject to disclosure under Chapter 132 of the General Statutes, and it may not be released to any person other than to the submitting communications service provider, the 911 Board, and the State Auditor without the express permission of the submitting communications service provider. Proprietary information is considered a trade secret under the Trade Secrets Protection Act, Article 24 of Chapter 66 of the General Statutes. General information collected by the 911 Board or the State Auditor may be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual communications service provider.

Code of Virginia (2013)

Title 2.2

Administration of Government

Subtitle II

Administration of State Government

Part B

Transaction of Public Business

Chapter 37

Virginia Freedom of Information Act.

§ 2.2-3700. Short title; policy.

- A. This chapter may be cited as “The Virginia Freedom of Information Act.”
- B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records

and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions.

The following records are excluded from the provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law:

...

4. Data, records or information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on

medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information has not been publicly released, published, copyrighted or patented.

...

United States Code

Title 17

Copyrights

Chapter 1

Subject Matter and Scope of Copyright.

§ 102. Subject matter of copyright: In general.

- (a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:
- (1) literary works;
 - (2) musical works, including any accompanying words;
 - (3) dramatic works, including any accompanying music;
 - (4) pantomimes and choreographic works;
 - (5) pictorial, graphic, and sculptural works;
 - (6) motion pictures and other audiovisual works;
 - (7) sound recordings; and
 - (8) architectural works.

- (b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.

Title 47

Telecommunications

Chapter 5

Wire or Radio Communication

Subchapter II

Common Carriers

Part I

Common Carrier Regulation.

§ 227. Restrictions on use of telephone equipment.

(a) Definitions

As used in this section—

(1) The term “automatic telephone dialing system” means equipment which has the capacity—

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

...

S.L. 2014-110

Session Laws-2014

"(h) Applicable Laws. – A North Carolina nonprofit corporation with which the Department contracts pursuant to this section is subject to the requirements of (i) Chapter 132 of the General Statutes and (ii) Article 33C of Chapter 143 of the General Statutes. Officers, employees, and members of the governing board of the corporation are public servants, as defined in G.S. 138A-3, and are subject to the requirements of Chapter 138A of the General Statutes. Officers, members of the governing board, and employees of the corporation whose annual compensation is ~~equal to or greater~~ less than ~~sixtyeighty~~ sixtyeighty thousand dollars (~~\$60,000~~)(\$80,000) are not subject to G.S. 138A-22."

SECTION 2. This act becomes effective July 1, 2014.

In the General Assembly read three times and ratified this the 1st day of August, 2014.

Became law upon approval of the Governor at 5:09 p.m. on the 6th day of August, 2014.

Session Law 2014-110

S.B. 648

AN ACT TO CREATE TRANSPARENCY IN CONTRACTS BETWEEN THE ATTORNEY GENERAL AND PRIVATE ATTORNEYS, TO PREVENT THE ABUSE OF PATENTS, TO ALLOW FOR SHAREHOLDER ASSENT TO EXCLUSIVE FORUM, AND TO LIMIT ASBESTOS-RELATED LIABILITIES FOR CERTAIN SUCCESSOR CORPORATIONS.

The General Assembly of North Carolina enacts:

PART I. CREATE TRANSPARENCY IN CONTRACTS BETWEEN THE ATTORNEY GENERAL AND PRIVATE ATTORNEYS

SECTION 1.1. Chapter 114 of the General Statutes is amended by adding a new Article to read:

"Article 2A.

"Transparency in Third-Party Contracting by Attorney General.

"§ 114-9.2. Title.

This Article shall be known and may be cited as the "Transparency in Private Attorney Contracts Act (TIPAC)."

"§ 114-9.3. Definitions.

The following definitions apply in this Article:

- (1) Contingency fee contract. – A contract entered into by a State agency to retain private counsel that contains a contingency fee arrangement, including, but not limited to, pure contingency fee agreements and hybrid agreements, including a contingency fee aspect.
- (2) Government attorney. – An attorney employed by the State as a staff attorney in a State agency.
- (3) Private attorney. – An attorney in private practice or employed by a private law firm.
- (4) State. – The State of North Carolina, including State officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of State government and any of its agents.
- (5) State agency. – Every agency, institution, department, bureau, board, or commission of the State of North Carolina authorized by law to retain private counsel.

"§ 114-9.4. Procurement.

(a) A State agency may not enter into a contingency fee contract with a private attorney unless the Attorney General makes a written determination prior to entering into the contract

"§ 114-9.7. Oversight.

(a) Until the conclusion of the legal proceeding or other matter for which the services of the private attorney have been retained, the executed contingency fee contract and the Attorney General's written determination pursuant to G.S. 114-9.4 shall not be deemed a public record within the meaning of Chapter 132 of the General Statutes. All records maintained under this subsection shall be made available to the State Auditor for oversight purposes, upon request.

(b) The amount of any payment of contingency fees pursuant to a contingency fee contract subject to this Article shall be posted on the Attorney General's Web site within 15 days after the payment of those contingency fees to the private attorney and shall remain posted on the Web site for at least 365 days thereafter.

(c) Any private attorney under contract to provide services to a State agency on a contingency fee basis shall maintain all records related to the contract in accordance with the Revised North Carolina Rules of Professional Conduct.

(d) By February 1 of each year following a year in which a State agency entered into a contingency fee contract with a private attorney, the Attorney General shall submit a report to the President Pro Tempore of the Senate and the Speaker of the House of Representatives describing the use of contingency fee contracts with private attorneys in the preceding calendar year. To the fullest extent possible without waiving the evidentiary privileges of the State in any pending matters, the report shall:

- (1) Identify each new contingency fee contract entered into during the year and each previously executed contingency fee contract that remains current during any part of the year.
- (2) Include the name of the private attorney with whom the department has contracted in each instance, including the name of the attorney's law firm.
- (3) Describe the nature and status of the legal matter that is the subject of each contract.
- (4) Provide the name of the parties to each legal matter.
- (5) Disclose the amount of recovery.
- (6) Disclose the amount of any contingency fee paid.
- (7) Include copies of any written determinations made under G.S. 114-9.4.

"§ 114-9.8. No expansion of authority.

Nothing in this Article shall be construed to expand the authority of any State agency or officer or employee of this State to enter into contracts for legal representation where no authority previously existed."

SECTION 1.2. G.S. 114-2.3 reads as rewritten:

"§ 114-2.3. Use of private counsel limited.

(a) Every agency, institution, department, bureau, board, or commission of the State, authorized by law to retain private counsel, shall obtain written permission from the Attorney General prior to employing private counsel. This section does not apply to counties, cities, towns, other municipal corporations or political subdivisions of the State, or any agencies of these municipal corporations or political subdivisions, or to county or city boards of education.

(b) Article 2A of this Chapter applies to any contract to retain private counsel authorized by the Attorney General under this section."

SECTION 1.3. Sections 1.1 and 1.2 of this act are effective when they become law and apply to any contract to retain private counsel authorized by the Attorney General entered into on or after that date.

PART II. PREVENT THE ABUSE OF PATENTS

SECTION 2.1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 8.

"Abusive Patent Assertions.

"§ 75-136. Title.

This Article shall be known and may be cited as the "Abusive Patent Assertions Act."

"§ 75-137. Purpose.

(a) The General Assembly finds the following:

- (1) North Carolina is home to a growing high-technology, knowledge-based economy. With its top-tier research universities and active technology sector, North Carolina is poised to continue its growth. To continue growing, North Carolina must attract new, small, and mid-sized technology companies. Doing so will help provide jobs for North Carolina's residents and boost North Carolina's economy. North Carolina also is home to companies in retail, manufacturing, and other industries, many of whom are customers of technology companies. Those other businesses are more likely to succeed if not inhibited by abusive and bad-faith demands and litigation.
- (2) Patents encourage research, development, and innovation. Patent holders have legitimate rights to enforce their patents.
- (3) The General Assembly does not wish to interfere with good-faith patent litigation or the good-faith enforcement of patents. The General Assembly also recognizes that North Carolina is preempted from passing any law that conflicts with federal patent law.
- (4) Patent litigation can be technical, complex, and expensive. The expense of patent litigation, which may cost millions of dollars, can be a significant burden on companies. North Carolina wishes to help its businesses avoid these costs by encouraging the most efficient resolution of patent infringement claims without conflicting with federal law.
- (5) In order for North Carolina companies to be able to respond promptly and efficiently to patent infringement assertions against them, it is necessary that they receive specific information regarding how their product, service, or technology may have infringed the patent at issue. Receiving this information at an early stage will facilitate the resolution of claims and lessen the burden of potential litigation on North Carolina companies.
- (6) Abusive patent litigation, and especially the assertion of bad-faith infringement claims, can harm North Carolina companies. A business that receives a letter asserting such claims faces the threat of expensive and protracted litigation and may feel that it has no choice but to settle and to pay a licensing fee even if the claim is meritless. This is especially so for small- and medium-sized companies and nonprofits that lack the resources to investigate and defend themselves against infringement claims.
- (7) Not only do bad-faith patent infringement claims impose a significant burden on individual North Carolina businesses, they also undermine North Carolina's efforts to attract and nurture technology and other companies. Funds used to avoid the threat of bad-faith litigation are no longer available to invest, produce new products, expand, or hire new workers, thereby harming North Carolina's economy.
- (8) North Carolina has a strong interest in patent matters involving its citizens and its businesses, including protecting its citizens and businesses against abusive patent assertions and ensuring North Carolina companies are not subjected to abusive patent assertion by entities acting in bad faith.
- (9) In lawsuits involving abusive patent assertions, an accused infringer prevailing on the merits may be awarded costs and, less frequently, fees. These awards do not serve as a deterrent to abusive patent assertion entities who have limited liability, as these companies may hold no cash or other

transferor before the effective date of this act shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

"§ 99E-44. Adjustment.

(a) Except as provided in subsections (b), (c), and (d) of this section, the fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of the following:

- (1) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the Wall Street Journal, in which case any reasonable determination of the prime rate on the first day of the calendar year may be used.
- (2) One percent (1%).

(b) The rate defined in subsection (a) of this section shall not be compounded.

(c) The adjustment of the fair market value of total gross assets shall continue as provided in subsection (a) of this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance that may be included in the definition of total gross assets by subsection (c) of G.S. 99E-43.

"§ 99E-45. Scope of Article; application.

(a) This Article shall be liberally construed with regard to successors.

(b) This Article shall apply to all asbestos claims filed against a successor on or after the effective date of this act."

SECTION 4.2. Section 4.1 of this act becomes effective January 1, 2015.

PART V. SEVERABILITY AND EFFECTIVE DATE

SECTION 5.1. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

SECTION 5.2. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of August, 2014.

Became law upon approval of the Governor at 5:09 p.m. on the 6th day of August, 2014.

AN ACT TO AMEND AND CLARIFY VARIOUS PROVISIONS OF THE ELECTION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 163-106(b) reads as rewritten:

"(b) Eligibility to File. – No person shall be permitted to file as a candidate in a party primary if, at the time he offers to file notice of candidacy, he is registered on the appropriate registration book or record as an affiliate of a political party other than that in whose primary he is attempting to file. No person who has changed his political party affiliation or who has changed from unaffiliated status to party affiliation as permitted in G.S. 163-82.17, shall be permitted to file as a candidate in the primary of the party to which he changed unless he has been affiliated with the political party in which he seeks to be a candidate for at least 90 days

S.L. 2014-115

Session Laws-2014

SECTION 4. The Joint Legislative Transportation Oversight Committee shall study whether additional statutory changes are needed to ensure the safe operation of mopeds. The report shall include data on (i) the number of mopeds involved in traffic accidents, (ii) the number and types of injuries resulting from traffic accidents involving mopeds, and (iii) the causes for the traffic accidents involving mopeds. The Committee shall also study whether insurance should be required to operate a moped on a public street or highway. The Committee shall report its findings, together with any recommended legislation, to the 2015 Regular Session of the General Assembly upon its convening.

SECTION 5. Sections 1, 2, and 3 of this act become effective July 1, 2015, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 1st day of August, 2014.

Became law upon approval of the Governor at 5:12 p.m. on the 6th day of August, 2014.

Session Law 2014-115

H.B. 1133

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE GENERAL STATUTES AND THE SESSION LAWS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE ADDITIONAL TECHNICAL AND OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I. TECHNICAL CORRECTIONS RECOMMENDED BY THE GENERAL STATUTES COMMISSION

SECTION 1. Subsection (c) of G.S. 1A-1, Rule 59, is rewritten to read:

"(c) Time for serving affidavits. – When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 30 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits."

SECTION 2. G.S. 15-11.2 reads as rewritten:

"§ 15-11.2. Disposition of unclaimed firearms not confiscated or seized as trial evidence.

(a) Definition. – For purposes of this section, the term "unclaimed firearm" means a firearm that is found or received by a law enforcement agency and that remains unclaimed by the person who may be entitled to it for a period of 30 days after the publication of the notice required by subsection (b) of this section. The term does not include a firearm that is seized and disposed of pursuant to G.S. 15-11.1 or a firearm that is confiscated and disposed of pursuant to G.S. 14-269.1.

(b) Published Notice of Unclaimed Firearm. – When a law enforcement agency finds or receives a firearm and the firearm remains unclaimed for a period of 180 days, the agency shall publish at least one notice in a newspaper published in the county in which the agency is located. The notice shall include all of the following:

- (1) A statement that the firearm is unclaimed and is in the custody of the law enforcement agency.
- (2) A statement that the firearm may be sold or otherwise disposed of unless the firearm is claimed within 30 days of the date of the publication of the notice.
- (3) A brief description of the firearm and any other information that the chief or head of the law enforcement agency may consider necessary or advisable to reasonably inform the public about the firearm.

currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two – four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. No more than one trustee from Group Two may be a member of ~~a each appointing~~ board of county commissioners. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three – four trustees, appointed by the Governor.

Group Four – the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to this Chapter shall be an ex officio nonvoting member of the board of trustees of each said institution."

SECTION 51.(b) This section applies only to the Boards of Trustees of Central Carolina Community College.

SECTION 51.(c) This section is effective when it becomes law and applies to appointments made on or after that date.

SECTION 51.5. G.S. 115D-15(a) reads as rewritten:

"(a) The board of trustees of any institution organized under this Chapter may, with the prior approval of the North Carolina Community Colleges System Office, convey a right-of-way or easement for highway construction or for utility installations or modifications. When in the opinion of the board of trustees the use of any other real property owned or held by the board of trustees is unnecessary or undesirable for the purposes of the institution, the board of trustees, subject to prior approval of the State Board of Community Colleges, may ~~sell, exchange, or lease the property~~ sell or dispose of the property. For purposes of this section, "dispose" means "lease, exchange, or demolish." The board of trustees may dispose of any personal property owned or held by the board of trustees without approval of the State Board of Community Colleges. Personal property titled to the State Board of Community Colleges consistent with G.S. 115D-14 and G.S. 115D-58.5 may be transferred to another community college at no cost and without the approval of the Department of Administration, Division of Surplus Property.

Article 12 of Chapter 160A of the General Statutes shall apply to the disposal or sale of any real or personal property under this subsection. Personal property also may be disposed of under procedures adopted by the North Carolina Department of Administration. The proceeds of any sale or lease shall be used for capital outlay purposes, except as provided in subsection (b) of this section."

SECTION 52. Part 5 of Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

§ 116-43.17. Confidentiality of research data, records, and information of a proprietary nature.

Research data, records, or information of a proprietary nature, produced or collected by or for state institutions of higher learning in the conduct of commercial, scientific, or technical research where the data, records, or information has not been patented, published, or copyrighted are not public records as defined by G.S. 132-1."

SECTION 53.(a) G.S. 120-31 is amended by adding a new subsection to read:

"(c1) Six members of the Commission constitute a quorum."

SECTION 53.(b) G.S. 120-31(f) reads as rewritten:

"(f) In any case where any provision of law or any rule of the Legislative Services Commission ~~required~~ requires approval of any action by the Legislative Services Commission,

SECTION 89. Section 1(b) of S.L. 2013-1, as amended by Section 16.1 of S.L. 2013-410, reads as rewritten:

"**SECTION 1.(b)** The State Board of Education shall make high school diploma endorsements, as provided under this section, available to students graduating from high school beginning with the 2014-2015 school year. The State Board of Education shall report to the Joint Legislative Education Oversight Committee on the progress toward establishing specific college and career endorsements for high school diplomas and for awarding these endorsements by February 1, 2014. The State Board of Education shall submit the report on the impact of awarding the high school endorsements on high school graduation, college acceptance and remediation, and post-high school employment rates by ~~September 1,~~ September 15, 2016, and annually thereafter."

SECTION 90. Section 3(b) of S.L. 2013-1 reads as rewritten:

"**SECTION 3.(b)** The State Board of Education and the State Board of Community Colleges shall jointly report to the Joint Legislative Education Oversight Committee by ~~October 1,~~ October 15, 2014, on progress made on developing strategies to increase student engagement in career and technical education, especially in engineering and industrial technologies, and in other occupations with high numbers of employment opportunities."

SECTION 91. Section 7.6(c) of S.L. 2013-360 reads as rewritten:

"**SECTION 7.6.(c)** By ~~October 1,~~ October 15, 2013, and quarterly thereafter, the Office of the State CIO and DPI shall report on the establishment of public school cooperative purchasing agreements, savings resulting from the establishment of the agreements, and any issues impacting the establishment of the agreements. The reports shall be made to the Joint Legislative Oversight Committee on Information Technology, the Joint Legislative Education Oversight Committee, and the Fiscal Research Division."

SECTION 92. Section 8.3(j) of S.L. 2013-360 reads as rewritten:

"**SECTION 8.3.(j)** Reports. – For the 2013-2015 fiscal biennium, the State Board of Education shall report to the Fiscal Research Division prior to ~~May 1~~ May 15 of each year if it determines that counties have supplanted funds."

SECTION 93. Section 8.4(i) of S.L. 2013-360 reads as rewritten:

"**SECTION 8.4.(i)** Reports. – For the 2013-2015 fiscal biennium, the State Board of Education shall report to the Fiscal Research Division prior to ~~May 1~~ May 15 of each fiscal year if it determines that counties have supplanted funds."

PART IV. EFFECTIVE DATE.

SECTION 94. Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 2nd day of August, 2014.

Became law upon approval of the Governor at 5:00 p.m. on the 11th day of August, 2014.

Session Law 2014-116

S.B. 884

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND TO APPOINT A MEMBER OF THE BOARD OF DIRECTORS FOR THE NORTH CAROLINA PARTNERSHIP FOR CHILDREN, INC., UPON THE RECOMMENDATION OF THE MAJORITY AND MINORITY LEADERS OF THE HOUSE OF REPRESENTATIVES.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives; and

1 had made some financial requests in there, and we have got
2 all those worked out; so we are not going to be asking the
3 Court to make any decision on any kind of financial matters.

13:09:31 4 THE COURT: All right. And Mr. Lambeth, do you want
5 to reply to that?

13:09:35 6 DEFENDANT'S ARGUMENT

13:09:35 7 MR. LAMBETH: Yeah. Thank you, Your Honor.

13:09:37 8 So, you know, Mr. Walker, I think, has aptly
9 described the statutory interpretation issues here. And I
10 think Your Honor sort of has three obvious sort of choices.
11 Obviously, there are more choices that you have if you would
12 like to take advantage of them; but -- but two of them are,
13 of course: Adopt the University's definition of
14 "proprietary" in the referee's report as it shows that,
15 adopt U.S. Right to Know's definition of "proprietary" in
16 the referee's report it shows that. And the University has
17 no objection at all to the way that Judge Hunter, you know,
18 reviewed the documents or how these determinations came out
19 under each definition.

13:10:21 20 The third option is what Mr. Walker started with,
21 which is, again, the question whether "of a proprietary
22 nature" modifies just information or all the parts of the
23 series. And if I -- may I share my screen?

13:10:35 24 THE COURT: Yes.

13:10:36 25 MR. LAMBETH: Okay. I'm going to -- I've just got

1 some very basic PowerPoint slides that I think help to --
2 help to -- for us to all look at the same thing because the
3 statutory interpretation is at times complicated. So
4 hopefully everybody is seeing the PowerPoint slides here.

13:10:56 5 THE COURT: Yes.

13:10:57 6 MR. LAMBETH: This, of course, is the statute at
7 issue; and Mr. Walker has argued that, again, the series
8 qualifier canon applies and that means that, yes, we agree
9 "research" applies to all, but also that "of a proprietary
10 nature" applies to "data, records, and information."

13:11:16 11 And, you know, he cites to a case, a U.S. Supreme
12 Court Case, Facebook v. Duguid, for that to support that.
13 And here is the statute at issue in Facebook v. Duguid.

13:11:28 14 So in that case the statute -- what mattered here
15 was whether using a random or sequential number generator
16 applied to both "store" and "produce." And you will see
17 there are some differences in the construction of this
18 statute as opposed to the research exception. One -- one
19 clear one is the existence in this statute of a comma before
20 the qualifier. That's not present here in our statute. And
21 that -- that's -- that's part of the analysis here. If you
22 read that case, it refers consistently to an integrated
23 clause, a -- a -- a -- a -- an entire clause; right? And --
24 and the idea there being that here "to store or produce
25 telephone numbers to be called" is a clause. Our statute is

1 different in that in our case the purported modifier "of a
2 proprietary nature" is actually a part of the clause; it's
3 not its own separate clause.

13:12:31

4 The Facebook case actually references as well that
5 the comma matters because the argument in the Facebook case
6 is -- is bolstered by the fact that the sentence
7 construction with the way the comma is placed, you know,
8 indicates that's how it should be read. That's the way that
9 you read the English language. So I -- I actually think
10 that the Facebook case is instructive, but it's instructive
11 if we were trying to determine instead whether the second
12 clause of the research exception -- I'm sorry, I know this
13 is sort of minutiae here, but, "which is produced or
14 collected by or for state institutions of higher learning in
15 the conduct of commercial, scientific, or technical
16 research." That's the second clause. If the question was
17 whether that applied to everything in the series, then the
18 Facebook analysis would be the same; right? It would be the
19 same as what you would see here. So I think we are looking
20 at the wrong part of the statute for that case to be
21 analogous.

13:13:34

22 There is actually another U.S. Supreme Court case.
23 I'm going to skip down to -- to the third slide here,
24 Lockhart v. United States, where again the question was: Do
25 you apply the series qualifier canon or the last antecedent

1 canon? In this case, the statute at issue, you see the
2 highlighted part here. It -- this had to do with whether
3 "involving a minor or ward" modified "aggravated sexual
4 abuse, sexual abuse or abusive sexual conduct." And in that
5 case, the Court said -- I'll go to the next slide -- that
6 the rule of the last antecedent applied because of the
7 context of the case. And if you look at it, this case is
8 actually much more -- and what that meant there is that the
9 Court said that "involving a minor or ward" only modified
10 "abusive sexual conduct" and did not modify the whole
11 series.

13:14:28 12 Well, if you look at this statute, it is actually
13 much more similar in the highlighted language to the
14 research exception. You have one clause of which a modifier
15 is a part; and the Court said that that modifier only
16 applies to the last in the series, "abusive sexual conduct."
17 That's the same as what the University contends here. One
18 clause of which the modifier is a part and the modifier "of
19 a proprietary nature," then, would only apply to
20 "information" and not to everything. So --

13:14:57 21 THE COURT: Lockhart was relying on the context.
22 Did they discuss the comma issue?

13:15:03 23 MR. LAMBETH: Lockhart, I don't think it discussed
24 the comma issue. The context in Lockhart was -- was really
25 the -- well, I guess it -- it essential -- they didn't

1 discuss it in so many words; but the context was, again, the
2 grammatical and sentence structure at issue. So the same
3 sort of concept. In our case, I think -- I think that's
4 also the context, that if you look at the structure and
5 where the commas are, that's what would lead you to that
6 result.

13:15:35 7 I will also note that our legislature could have
8 avoided this question entirely by putting "proprietary" or
9 "of a proprietary nature" at the beginning of the statute.
10 It could have said, "proprietary research data, records, or
11 information," and then there would no longer be a question
12 of what it modified. And, in fact, if you look at other
13 cases where the Public Records Act is at issue, the
14 legislature has done just that. 132-1.1, proprietary
15 computer code, even though you have got more behind this,
16 that it, you know, otherwise may not apply to all of; right?

13:16:10 17 Same with 1.2, "proprietary design work" or "work
18 product." Well, "proprietary" modifies both "design work"
19 or "work product" because of where "proprietary" is located.
20 And then this is a statute outside the Public Records Act,
21 not unlike the research exception, but one that -- that is
22 construed as an exception to the Public Records Act. And
23 here, "proprietary information then that is submitted to the
24 911 board or the state auditor is confidential."

13:16:39 25 So, again, the legislature certainly knows how to

1 put "proprietary" at the beginning of the statute instead of
2 at the end. And if it had done so, like in those other
3 cases, then, again, you know, it would be obvious that it
4 applied to all three. By putting it at the end, especially
5 as you look at Lockhart, it shows instead that it should
6 modify only -- that "of a proprietary nature" should modify
7 only "information."

13:17:04 8 Judge Hunter, of course, spent a lot of time going
9 through the documents here -- and, again, the University has
10 no objection to his very diligent work -- and -- and did not
11 discuss this part in particular, instead, looked -- looked
12 at the competing definitions of "proprietary."

13:17:21 13 I'm going to move on to that because I do think that
14 matters regardless of whether "of a proprietary nature"
15 modifies just "information" or everything because, of
16 course, the definition of "proprietary" is still part of the
17 statute.

13:17:33 18 So, you know, Mr. Walker has said that "proprietary"
19 in effect is trade secrets and pointed to the definition, I
20 think, in Black's Law Dictionary, which I believe we had
21 included in our brief as well, where it says, "See trade
22 secrets." But, you know, as -- as we all know from --
23 from -- from citation -- right? -- from -- from -- from any
24 sort of legal citation, "see" does not mean "this is the
25 same as"; it is -- I think "trade secret" there is used as

1 an example. And yes, trade secrets certainly are a
2 proprietary interest; and the University, of course, agrees
3 that would fall under the "proprietary" umbrella. There are
4 other --

13:18:13 5 THE COURT: Wait. Now, Mr. Lambeth, to be clear,
6 are you just assuming for purposes of responding to
7 plaintiff's argument that "proprietary" does apply to "data,
8 records, and information"?

13:18:30 9 MR. LAMBETH: Good question. Thank you. So I think
10 there are two different things here. One, I think -- I
11 think the definition of "proprietary" matters regardless
12 because it's going to at least modify "information." Under
13 no scenario is information protected unless it is
14 proprietary, whatever "proprietary" means. If "proprietary"
15 only modifies "information," then all research records are
16 protected.

13:18:55 17 And in this case what that means is that the
18 University in -- in my view would produce a smaller set of
19 documents than what Judge Hunter says under the University's
20 definition of "proprietary," were it to modify everything.
21 The documents that would still have to be produced would be
22 -- Judge Hunter has -- has -- has rightfully said that we
23 withheld some published manuscripts when they were attached
24 to what we would consider research records.

13:19:23 25 I agree and concede that that's not proper under the

1 statute and he's right that -- that we need to produce
2 those, and we will produce those published manuscripts
3 regardless of the outcome of the case. If we then assume
4 that the "proprietary" modifies everything, then, yes,
5 that's my assumption for the rest of this argument.

13:19:42

6 If "proprietary" modifies everything, then the
7 definition of "proprietary" does become more important, of
8 course; and, you know, I -- I don't want to belabor the
9 points in my brief, and so I'm not going to go into too much
10 detail about the argument of what we believe "proprietary"
11 means other than to say that "proprietary" is a property.
12 It is tantamount to property. "Intellectual property" and
13 "proprietary" -- right? -- those are very similar concepts.
14 And property rights are not just trade secrets, but, of
15 course, also patents, copyright, trademark, many other --
16 not many other things. Those are really the four main areas
17 of proprietary. So we believe that "proprietary" actually
18 should be that broad.

13:20:27

19 And, again, I think the legislature knows how to and
20 had the opportunity to just say "trade secrets." It could
21 have said, instead of "information of a proprietary nature,"
22 it could have just said "trade secrets." And, in fact,
23 there is another exception to the Public Records Act also in
24 132-1.2 that says that trade secrets of third parties are --
25 are excepted from the Act. So the legislature understands

1 that trade secrets is its own concept, understands that
2 these are not the exact same and -- and instead chose to use
3 the word "proprietary" instead of "trade secrets."

13:21:07 4 I'm going to stop sharing now.

13:21:09 5 The -- the copyright part of this is also very
6 interesting and nuanced. And I covered that in detail in my
7 brief, and so I'm happy to answer any questions on it. The
8 one point that I think is particularly important there is --
9 is, again, the past tense verb nature of "copyright" in that
10 series, where it's "patented, published, copyrighted"
11 implies some action being taken. Statutory copyright
12 protection applies without an action. The act of
13 registering a copyright is the action that I think is
14 intended by that -- by that statute.

13:21:46 15 THE COURT: Thank you.

13:21:47 16 Did you want to reply, Mr. Walker?

13:21:49 17 PLAINTIFF'S ARGUMENT

13:21:50 18 MR. WALKER: Just very briefly. I think in the
19 Lockhart case the purpose of Congress in that statute was
20 broad. And I think here, the legislature has made it clear
21 through other statutes, especially 132-1, that their idea is
22 that all the exceptions would be construed as narrowly as
23 possible. And -- and other than that, I -- I'd rest on what
24 we said before.

13:22:14 25 THE COURT: Thank you.

- App. 31 -
COURT'S RULING ON SUMMARY JUDGMENT MOTION

13:22:16 1 And, Ms. Jenkins, do you want to be heard?

13:22:19 2 MS. JENKINS: No. Thank you, Your Honor.

13:22:19 3 DEFENDANT'S ARGUMENT

13:22:23 4 MR. LAMBETH: Judge Grine, if I may just really
5 quickly. Mr. Walker has jogged my memory when you asked the
6 question about the context in Lockhart. Part of it -- it
7 was partly statutory or partly sentence construction, but it
8 was also partly the -- the difference between -- and you'll
9 understand this much better than me; I have never practiced
10 criminal law -- but the difference between sexual abuse
11 criminal statutes at the state level and the federal level
12 and ensuring harmony there as well. So there was other
13 context there.

13:22:49 14 COURT'S RULING

13:22:53 15 THE COURT: All right. So it sounds like the
16 parties are ready for the Court to decide on the definition
17 of "proprietary."

13:23:04 18 And so I will go ahead and -- and rule that the
19 Court does have jurisdiction to hear this matter that the
20 plaintiffs brought under Chapter 132, Section 9, that
21 creates a cause of action for people who believe they have
22 been denied public records under the Public Records Act
23 Chapter 132, Section 1.

13:23:49 24 And I will find that under the research exemption,
25 Chapter 116, Section 43.17, that "research" does modify

- App. 32 -
COURT'S RULING ON SUMMARY JUDGMENT MOTION

1 "data, records, and information."

13:24:25 2 "Of a proprietary nature," having considered the
3 arguments, counsel, the record, and the authority presented,
4 the Court will conclude that that modifies "information"
5 only in "research information." In the alternative, the
6 Court will adopt the broader definition of "proprietary" put
7 forward by the University. And the Court will incorporate
8 the findings of the referee and order that UNC make the
9 additional disclosures according to that -- I believe it was
10 the second chart. Would have been the second chart
11 number two; is that right?

13:25:21 12 MR. LAMBETH: Let me -- I'm sorry, Your Honor. Let
13 me pull it up again.

13:25:24 14 MR. WALKER: I believe that second chart is the one,
15 the UNC definition chart?

13:25:29 16 THE COURT: Yes, sir. Let me find it. I believe it
17 was numerical two under the UNC definition chart.

13:25:40 18 MR. LAMBETH: Yes.

13:25:48 19 THE COURT: And what would be a reasonable
20 timeframe, Mr. Lambeth first?

13:25:58 21 MR. LAMBETH: And just to make sure I'm -- I'm
22 clear, so you are -- we need to produce everything that was
23 labeled as a two?

13:26:04 24 THE COURT: In the second chart. I believe
25 that's right. I am still not there.

- App. 33 -
COURT'S RULING ON SUMMARY JUDGMENT MOTION

13:26:09 1 MR. LAMBETH: Okay. I -- that -- I don't think it
2 will take us very long. We have got all this stuff labeled
3 in our system so we can run it. So I think -- I mean,
4 certainly two weeks would be very doable.

13:26:27 5 THE COURT: All right.

13:26:27 6 And Mr. Walker, do you want to be heard on that
7 timeframe or anything else?

13:26:32 8 MR. WALKER: I think two weeks is a pretty good
9 turnaround.

13:26:35 10 MR. LAMBETH: And we'll -- I mean, we will endeavor
11 to do it quicker. I don't think it will take long, but I
12 need to consult with my technical people before I commit to
13 anything more.

13:26:44 14 THE COURT: All right. So in terms of procedure,
15 technically I suppose it is granting in part the defendant's
16 motion and denying in part.

13:27:04 17 And Mr. Lambeth, I'll ask you, please, to draft a
18 proposed order and circulate it to the parties. And then
19 once that's happened, please e-mail a copy in Word to
20 Ms. Richardson and/or Ms. Lucero.

13:27:29 21 MR. LAMBETH: Yes, Your Honor.

13:27:32 22 THE COURT: Anything further?

13:27:37 23 MR. WALKER: No, Your Honor.

13:27:38 24 MR. LAMBETH: No, Your Honor. Thank you.

13:27:39 25 MR. WALKER: Thank you.