STATE OF NORTH CAROLINA
COUNTY OF WAKE

JN.THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
08 CVD-12310

Entrary	a factorial and a
GARY D. RENTZ, DONNA A. RENTZ,)
KRISTA C. LISTER)
D 1) DEFENDANT'S EX PARTE MOTION TO
v.) COMPEL STATE TO DISCLOSE NANCY
) COOPER'S AUTOPSY INFORMATION
BRAD COOPER	

NOW COMES the Defendant, by and through counsel, and respectfully moves this Court ex parte to Order the state to disclose Nancy Cooper's autopsy information. This information is critical to Brad Cooper's ability to challenge Plaintiff's unsubstantiated insinuations that he played a role in Ms. Cooper's death and it is therefore critical to the protection of his fundamental liberty interests in the care and custody of his children.

- 1. Defendant Brad Cooper is the biological father of two children. He fathered these children with his deceased wife, Nancy Cooper.
- 2. Prior to Ms. Cooper's death on July 12, 2008, Mr. and Ms. Cooper were in the process of separating.
- 3. Plaintiffs, in their motion for custody of Mr. Cooper's daughters, imply without substantiation that (1) because Mr. Cooper's wife disappeared and (2) because Mr. Cooper and his wife were having marital problems, that Mr. Cooper was involved in his wife's death.
- 4. The police, unlike Plaintiffs, have not implied that Mr. Cooper is responsible for his wife's death. Indeed, Mr. Cooper is not a police suspect or a party of interest in Nancy Cooper's death.
- 5. Substantive due-process requires "heightened protection against government interference with certain fundamental rights and liberty interests." Washington v. Glucksberg, 521 U.S. 702, 720 (1997).
- 6. Parents have a "fundamental, constitutionally protected liberty interest in the custody of their children." E.g., *Troxell v. Granville*, 530 U.S. 57, 65-66 (2000), *Stanley v. Illinois*, 405 U.S. 645, 651-52, 92 (1972). This liberty interest, "the interest of parents in the care, custody, and control of their children- is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme] Court." *Troxell*, 530 U.S. at 65.

- 7. In the case before this Court fairness of process cannot be had unless Mr. Cooper is able to challenge the Plaintiff's unfounded insinuation that he is responsible for his wife's death and further that he should therefore should be deprived of the custody of his children.
- 8. Upon information and belief, the state, upon whose authority Mr. Cooper would be deprived of the custody of his children, is in possession of Ms. Cooper's autopsy information. Upon information and belief, this information may offer Mr. Cooper a response to Plaintiff's unsubstantiated allegations that he played a role in his wife's death.
- 9. Though typically information that is made available to family members, in this matter the Medical Examiner, upon information and belief, Dr. John Butts has been instructed not to discuss the circumstances of Nancy Cooper's death. As such we are unable to even determine cause of death, time of death or even why this case is being classified as a homicide. These are all relevant and necessary to dispel the insinuations that Brad Cooper is somehow responsible.
- 10. Because this information is critical to a fundamental, constitutionally protected interest of Mr. Cooper's, counsel asks this Court to Order the State to disclose this information to counsel.
- 11. In the alternative, counsel asks this Court to bar Plaintiffs from challenging Mr. Cooper's custody on the basis of mere unsubstantiated insinuations that he was involved in his wife's death. To do so without allowing Mr. Cooper access to information that could allow him to challenge these assertions would work a grave injustice to his fundamental liberty interests.

Wherefore Defendant asks this Court ex parte to:

- (1) Order the state to disclose to counsel information about Nancy Cooper's death; OR
- (2) Preclude Plaintiffs from arguing for custody by insinuating that that Mr. Cooper was involved in Nancy Cooper's death; OR
- (3) order any other relief that this court deems appropriate.

RESPECTFULLY SUBMITTED this the 23rd day of July 20089

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CERTIFICATE OF SERVICE

The undersigned attorneys for the Defendant certify that on this day, the foregoing MOTION was served upon the attorney of record for the Plaintiffs in this action and the Wake County District Attorneys office by hand delivery as follows:

Alice C. Stubbs Attorney for the Plaintiffs Tharrington Smith LLP 209 Fayetteville Street PO Box 1151 Raleigh, NC 27602

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RESPECTFULLY SUBMITTED this the 23rd day of July 2008

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