

**UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

TUSHAWN CRAIG and MARQUETTA
STOKES,

Plaintiffs

vs

CORNERSTONE TRADING GROUP, LLC,
SETH SMITH, and CITY OF RICHMOND,
INDIANA,

Defendants.

Civil Action No.

1:23-cv-01575-TWP-MJD

DECLARATION OF KRISTOPHER CUNDIFF

Pursuant to 28 U.S.C. § 1746, I, Kristopher Cundiff, declare as follows:

1. I am the Indiana Local Legal Initiative attorney with the Reporters Committee for Freedom of the Press (the “Reporters Committee”), an unincorporated nonprofit association based in Washington, D.C. As Reporters Committee’s Indiana attorney, I live and work in Fishers, Indiana. I am a member in good standing of the bar of Indiana, and I am admitted to practice before this Court. I am counsel of record for non-party journalist Mike Emery (“Emery”) in this matter and make this declaration in support of Mr. Emery’s Motion to Quash Subpoena for his testimony in *Craig, Stokes, et al. v. Cornerstone Trading Group, LLC, et al.*, Civil Action No. 1:23-cv-01575 (the “Cornerstone Lawsuit”), a civil lawsuit pending in the U.S. District Court for the Southern District of Indiana. I have personal knowledge of the matters stated in this declaration.

2. The subpoena, dated August 21, 2026 (attached to the Declaration of Mike Emery as Exhibit A), was issued by Arie Lipinski, counsel for defendants Cornerstone Trading Group,

LLC and Seth Smith in the Cornerstone Lawsuit. The subpoena commands Emery to appear and testify at the trial in this case at 9:00 a.m. on September 17, 2026.

3. I learned about the subpoena from Chris Hardie, publisher of the Western Wayne News newspaper, for which Mr. Emery is a full-time reporter, on August 28, 2026, which I understand is the same date on which Mr. Emery and Mr. Hardie received the subpoena via certified mail to a Post Office Box affiliated with Western Wayne News.

4. On September 2, 2026, I emailed Mr. Lipinski and stated that I represent Mr. Emery and his employer Civic Spark Media LLC d/b/a Western Wayne News (“WWN”). I stated that my clients had serious concerns about the scope of the subpoena, including but not limited to the extent it may invade constitutional and statutory reporter’s privileges. I invited Mr. Lipinski to schedule a call as soon as possible to better understand the status of the case, how the Subpoena fits in, to address my clients’ concerns, and avoid potentially unnecessary motion practice.

5. On September 3, 2026, Mr. Lipinski responded by email and stated that he intended to call Mr. Emery to testify to “lay the foundation for an article” that he wrote: *Blame for Fire’s Cause, Costs Hit Property Owner*, which WWN published on April 20, 2023. See Emery Decl. Ex. B (the “Article”).

6. I responded to Mr. Lipinski the same day and stated that we would like to ensure that we clarify any ambiguity and understand what laying the foundation for Mr. Emery’s article means, and invited Mr. Lipinski to speak by phone the next morning, which he agreed to do.

7. A true and correct copy of the thread containing the emails described in paragraphs 4-6 is attached hereto as **Exhibit A**.

8. On the morning of September 4, 2026, I, along with Reporters Committee Local Legal Initiative Director Eric Feder, met and conferred by telephone with Mr. Lipinski.

9. During that call, I recall that Mr. Lipinski represented that he sought Mr. Emery's testimony as a means to get the Article into evidence so the jury could "look at it," because, he maintained, the information in the Article is material to the case and provides a "good summary of what happened here." He noted that the Article had been used as an exhibit at a deposition earlier in the case, and that he had included it on the Cornerstone Defendants' trial exhibit list. He also stated that there was certain information in the Article for which he was interested in learning how Mr. Emery had obtained it—specifically, a line in the Article that "[Seth] Smith said he was working toward deeded ownership [of one of the buildings at issue] from listed owner AFG Investment Fund...". We told Mr. Lipinski that information about the sources of information in the Article would be subject to absolute protection against compelled disclosure under the Indiana Shield Law. I recall that Mr. Lipinski stated that he would not necessarily need to ask Mr. Emery about that issue at all, and instead just wanted Mr. Emery's testimony to "establish what the article says" generally, because that would be a "great way" for the jury to be able to look at it.

10. During the call, we articulated concerns about the scope of the subpoena in light of the Indiana Shield Law, and the constitutional reporter's privilege, and expressed that the need for Mr. Emery's testimony did not seem sufficient to meet basic undue burden standards under Rule 45. We noted that, under Federal Rule of Evidence 902(6), newspapers and periodicals were self-authenticating, and that, if necessary, we believed WWN would be in a position to submit a business records certification to authenticate a copy of the Article maintained in the newspaper's archives. Mr. Lipinski told us that the parties had been unable to stipulate to many of the facts in the case, and that defendant City of Richmond, Indiana (the "City") had indicated in a spreadsheet exchanged among the parties that it would not stipulate to admitting the Article due to a lack of "sponsoring witness." We asked Mr. Lipinski whether confirmation from the City that it would

not object to the authenticity of the Article would obviate the need for Mr. Emery's testimony, and he suggested that it would. Mr. Lipinski also asked for more information on the reporter's privilege, which we agreed we would send to him.

11. Later in the day on September 4, 2026, Mr. Feder and I spoke by phone with Andrew McNeil of Bose McKinney & Evans, LLP, counsel for the City, regarding potential resolution of this matter. Mr. McNeil stated that, given the self-authenticating nature of news articles, if Mr. Emery submitted a business records affidavit, then the City would not object to the authenticity of the Article on the grounds that there was no "sponsoring witness."

12. Thereafter, I sent an email to counsel for the Plaintiffs informing them that we intended to circulate an email to all counsel regarding the proposed plan, and the parties would then respond in writing to confirm their agreement that providing a business records certification from WWN would obviate the need for a sponsoring witness to testify to the authenticity of the Article, given that news articles are self-authenticating under the Federal Rules of Evidence.

13. Before sending an email to all of the parties, I sent a follow-up email to Mr. Lipinski updating him about our call with counsel for the City and explaining our plan for circulating an email to all parties, to which each party could respond with their assent. I also provided him with an explanation of the Shield Law and reporter's privilege issues that would potentially stand in the way of enforcement of the subpoena. A true and correct copy of the thread of the emails described in paragraphs 13-15 is attached hereto as **Exhibit B**.

14. The next day, in response to the follow-up email I sent Mr. Lipinski on September 4, 2026, Mr. Lipinski replied by email stating: "If you can get the City to stipulate to the facts in the article, then I will agree to withdraw the subpoena." He also stated "I will not be withdrawing the subpoena without a court order or a stipulation to the admission of the article (or its contents)

as an exhibit—whether through stipulations of fact with the City or another form that you can accomplish.” Lipinski concluded by representing “This article contains truthful, valuable information to my clients, and I am going to fight to get it in front of the jury. I’ll make my arguments in response to any motion to quash, but a business records certification would not overcome the City’s hearsay objection.”

15. On September 8, 2026, I emailed Mr. Lipinski and confirmed that my clients are not in a position to secure substantive stipulations of fact from the parties in a long-running multi-defendant class action (noting that, based on the docket, the parties themselves had submitted separate proposed stipulations of fact). I noted that his demand flies in the face of Rule 45, which protects non-parties from being unduly burdened by getting enmeshed in someone else’s litigation. I concluded by informing Mr. Lipinski because of our impasse, we would file a motion to quash the subpoena pursuant to Rule 45.

16. The same day, I received an automated response from Mr. Lipinski stating he was preparing for or in a jury trial until at least September 25, 2026.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 9th day of September 2026, Fishers, Indiana.

/s/ Kristopher L. Cundiff
Kristopher L. Cundiff, Atty # 35193-49
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS
PO Box 150,
Fishers, IN 46038
(463) 271-4676
kcundiff@rcfp.org

Attorney for non-party Mike Emery