IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, EMMANUEL BAPTIST CHURCH, NEW OXLEY HILL BAPTIST CHURCH, BETHEL A. BAPTIST CHURCH, COVENANT PRESBYTERIAN CHURCH, CLINTON TABERNACLE AME ZION CHURCH, BARBEE'S CHAPEL MISSIONARY BAPTIST CHURCH, INC., ROSANELL EATON, ARMENTA EATON, CAROLYN COLEMAN, BAHEEYAH MADANY, JOCELYN FERGUSON-KELLY, FAITH JACKSON, and MARY PERRY, Plaintiffs, v. PATRICK LLOYD MCCRORY, in his official capacity as the Governor of North Carolina, KIM WESTBROOK STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections, JOSHUA B. HOWARD, in his official capacity as Chairman of the North Carolina State Board of Elections, RHONDA K. AMOROSO, in her official capacity as Secretary of the North Carolina State Board of Elections, JOSHUA D. MALCOLM, in his official capacity as a member of the North Carolina State Board of Elections, PAUL J. FOLEY, in his official capacity as a member of the North Carolina State Board of Elections and MAJA KRICKER, in her official capacity as a member of the North Carolina State Board of Elections, Defendants.	**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' BRIEF IN SUPPORT OF MOTION REGARDING ORDER ON ELECTRONICALLY STORED DOCUMENTS** **Case No.: 1:13-CV-658**

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, A. PHILIP RANDOLPH INSTITUTE, UNIFOUR ONESTOP COLLABORATIVE, COMMON CAUSE NORTH CAROLINA, GOLDIE WELLS, KAY BRANDON, OCTAVIA RAINEY, SARA STOHLER, and HUGH STOHLER,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, JOSHUA B. HOWARD in his official capacity as a member of the State Board of Elections, RHONDA K. AMOROSO in her official capacity as a member of the State Board of Elections, JOSHUA D. MALCOLM in his official capacity as a member of the State Board of Elections, PAUL J. FOLEY in his official capacity as a member of the State Board of Elections, MAJA KRICKER in her official capacity as a member of the State Board of Elections, and PATRICK LLOYD MCCRORY, in his official capacity as the Governor of North Carolina,

Defendants.

Case No.: 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA STATE BOARD OF ELECTIONS; and KIM W. STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections,

Defendants.

Case No.: 1:13-CV-861

INTRODUCTION

Defendants' purport to have enacted H.B. 589 to further transparency and integrity in North Carolina's political process, but now seek to keep secret the basic facts that led to the enactment of the law and the State's plans for implementing it. For this reason and others, Defendants' proposed additions to the draft ESI Order are inappropriate and should be denied. The Defendants' proposed additions reflect an ongoing attempt to delay or entirely disregard the Defendants' discovery obligations imposed by the Federal Rules of Civil Procedure. Two weeks ago, Defendants informed Plaintiffs that they would need a total of 120 days to complete document productions in this case—four times longer than the time provided under the Federal Rules. By comparison, Plaintiffs' motions for preliminary injunction are due in ***less than four months***, and expert reports concerning those same motions are due in ***less than three months***. As of the date of this filing, despite requests from Plaintiffs to confer on ways to expedite and facilitate the prompt production of documents, Defendants have declined to even identify the custodians from whom they intend to collect and produce documents, and the parties have not yet agreed to a set of search terms. Now, through their proposed additions to the draft ESI Order, Defendants are attempting not only to avoid producing, but even creating privilege logs for, whole categories of documents that plainly are relevant to the issues in dispute in this case and likely not privileged in the first place. Specifically, Defendants are proposing a date limitation on productions so that they would not be required to produce documents regarding the implementation and administration of H.B. 589, and are proposing an exception to the general rule requiring privilege logs

identifying documents withheld on the basis of privilege for broad categories of communications, which would render broad swaths of documents beyond the scope of either production or privilege logs.

As this Court recognized during the Rule 16 Conference, there is simply no time for delays in discovery in this case. Defendants' attempts to delay or entirely avoid their discovery obligations are at odds with the schedule necessary for this case—not to mention their public duty to disclose the basis for passing H.B. 589. In lieu of making efforts to respond to discovery, Defendants have gone to great lengths in crafting their proposed additions to not only avoid producing documents, but to even identify what they are seeking to withhold. Because they are neither reasonable in light of the claims at issue in this case, nor justifiable under the law applicable to privilege and discovery, Plaintiffs respectfully request that the Court reject Defendants' proposed additions to the ESI order and, to assure timely production, order Defendants to produce responsive documents and privilege logs by the deadlines imposed by the Federal Rules.

ARGUMENT

I. THE COURT SHOULD REJECT DEFENDANTS' PROPOSED PARAGRAPH 9A.

Through the proposed addition of paragraph 9A to the ESI Order, Defendants are attempting to restrict discovery in this case to only those documents that were created before August 12, 2013, the date on which Session Law 2013-581 was officially enacted

into law.[1] Such a restriction would be unprecedented and unsupported in the law. According to Defendants, documents created after August 12, 2013 are "not relevant" because "the claims filed by all of the plaintiffs in these consolidated actions are limited to challenging the ***facial*** legality or constitutionality of various provisions of SL 2013-581" and "[n]one of the plaintiffs have pled an '***as applied***' challenge to any of the provisions of SL 2013-581." 1/2/14 Defs.' Br. at 4, 8 [ECF No. 045](emphases added). That is simply wrong.

There is no basis in fact or law, however, for construing Plaintiffs' complaints as limited to facial challenges to SL 2013-581. All three complaints in these consolidated cases include allegations challenging not only the facial validity of SL 2013-581, but also the manner in which SL 2013-581 will be applied by employees, agencies, and officials in North Carolina. *See, e.g.*, NAACP First Am. Compl. ¶ 131 [ECF No. 026] (challenging "Defendants' actions in implementing and enforcing the provisions of H.B. 589"); ¶ 132 (same); ¶ 141 (same); ¶ 142 (same); ¶ 47 (naming Governor McCrory in part because he oversees "agencies that are involved with the implementation and enforcement of H.B. 589"); LWV Compl. ¶¶ 18-22 [ECF No. 001] (named members of the Board of Elections because they are "charged with administering the election laws of

---

[1] Defendants' proposed paragraph 9A would require the production of documents created after August 12, 2013 only if Plaintiffs moved to compel the production of those documents and the Court granted such a motion. But requiring Plaintiffs to file a motion to compel to obtain responsive documents reverses the normal burdens imposed by the Federal Rules, which would otherwise obligate Defendants to produce *all* responsive documents—including those created after August 12, 2013—without waiting for the Court to compel production through formal order. *See, e.g.*, Fed. R. Civ. P. 26 & 34.

the State of North Carolina"); DOJ Compl. at 21 [ECF No. 001] ("Implementation of HB 589 Will Have a Discriminatory Result"); ¶ 98 (challenging, *inter alia*, "North Carolina's implementation and enforcement" of H.B. 589); ¶ 99 (challenging the "implementation" of voter photo identification requirements). Thus, contrary to Defendants' arguments, Plaintiffs do in fact assert "as-applied challenges to the statute at issue." 1/2/14 Defs.' Br. at 9 [ECF No. 045].

Moreover, there is no basis in law or fact for limiting Plaintiffs' claims at this early stage of the litigation to asserting only facial challenges to SL 2013-581. The distinction between facial and as-applied challenges "goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010). Defendants thus cannot "prevent[] the Court from considering certain remedies"—such as Plaintiffs' as-applied challenges to SL 2013-581—through a restrictive interpretation of the pleadings. For that reason, courts routinely reject early attempts by defendants to preclude plaintiffs from asserting as-applied challenges. *See Ass'n of Cmty. Orgs. for Reform Now (ACORN) v. Corbett*, Civil Action No. 09-951, 2010 WL 3885373, at *7 (W.D. Pa. Sept. 28, 2010) (denying motion by State Attorney's General to prevent plaintiffs from challenging a statute on an "as applied" basis in light of "the Supreme Court's admonition in *Citizens United* that the distinction between facial and as-applied challenges goes to the breadth of the remedy employed by the Court rather than to what must be pleaded in a complaint") (quotations omitted); *Barrett v. Claycomb*, No. 2:11-CV-04242, 2013 WL 5567194, at *30 (W.D. Mo. Sept. 13, 2013) (rejecting the argument that "Plaintiffs are not entitled to as-applied

relief because they requested [only] facial relief" in their complaint on the grounds that defendant's argument "confuse[d] the breadth of the appropriate remedy with what must be pleaded in the complaint"); *Am. Fed'n of State, Cnty. & Mun. Emps. Council 79 v. Scott*, 717 F.3d 851, 864 (11th Cir. 2013) (relying on *Citizens United* to reject as "unconvincing" the State's argument that the Union could not assert an as-applied challenge "because the Union's complaint requested only facial relief").

This strong reluctance to foreclose the possibility of as-applied challenges is particularly relevant in cases challenging the lawfulness of voter identification laws or other restrictions on voting rights, which inevitably and routinely involve not only the facial provisions of the relevant State law, but also the manner in which State agencies and officials go about applying and implementing that law. *See, e.g.*, *South Carolina v. United States*, 898 F. Supp. 2d 30, 50 (D.D.C. 2012) (holding proper implementation of South Carolina's voter ID law crucial to avoid "unlawful[ly] racially discriminatory effects on African-American voters").

For these reasons, all of the Plaintiffs in these consolidated cases assert as-applied, as well as facial, challenges to SL 2013-581. The manner in which Defendants go about implementing and administering various provisions of SL 2013-581 therefore will be directly relevant to Plaintiffs' claims, and Defendants should be required to collect and produce documents created after August 12, 2013 that bear on those issues. Moreover, documents likely have and will be created after August 12, 2013 that bear upon the facial validity of the various provisions, including documents that discuss the legislators' and other government actors' intent in passing that legislation, or documents wherein

legislators acknowledge their awareness of the discriminatory impact of the law. There will also very likely be documents that discuss the background to the passage of the legislation in the course of discussing plans for its implementation. Clearly such documents should not be excluded from production merely because they happened to have been created after August 12, 2013. This Court should decline to adopt Defendants' proposed paragraph 9A to the ESI Order.

II. THE COURT SHOULD REJECT DEFENDANTS' PROPOSED PARAGRAPH 33.

In an effort to further avoid discovery, Defendants argue that three categories of documents should be exempt from the privilege log requirement set forth in Rule 26(b)(5)(A) of the Federal Rules. These categories include: (1) documents created by or exchanged between counsel for the parties; (2) documents exchanged between counsel for the parties and their respective clients once the litigation was initiated; and (3) documents created by or exchanged between legislators and their staff that are purportedly protected from disclosure by legislative immunity, privilege, or confidentiality. *See* 1/2/14 Defs.' Br. at 9 [ECF No. 045]. Plaintiffs are willing to waive the privilege log requirement for the first category of documents as described in Defendants' proposed ¶ 33(a)-(d) insofar as those provisions waive the privilege log requirement for documents and communications created or exchanged between counsel for each of the respective parties in this litigation, but Plaintiffs cannot and will not agree to waive the requirement for the second and third categories of documents for the reasons set forth below.

A. Waiving the Privilege Log Requirement for Communications Between Counsel and "Clients" Would Be Contrary to Principles of Federal Common Law.

Defendants' second category of documents seeks to waive the privilege log requirement for attorney-client communications exchanged after the initiation of litigation. The reality of this proposed limitation is that Defendants' proposed language would vastly over-designate documents as privileged, potentially leaving next to nothing to even log. Under Defendants' proposed language, there is no bright line even as to who defense counsel represents for purposes of the attorney-client privilege. According to Defendants' proposed ¶ 33A(a), defense counsel represents "the defendants in the case including the State of North Carolina and ***all of its agencies and officials***." 12/19/13 Defs.' Mot. at 4-5 [ECF No. 042] (emphasis added). In other words, under Defendants' proposed language, every agency and official in the State of North Carolina would fall under the umbrella of attorney-client privilege.

The sheer breadth of Defendants' request is contrary to basic principles of federal common law. Although the attorney-client privilege is an established principle that has been recognized in case law and is protected by the Federal Rules of Civil Procedure, courts have generally found that the privilege must be applied in a measured manner because it "impede[s] investigation of the truth by preventing certain evidence from being discovered." *Republican Party of N.C v. Martin*, 136 F.R.D. 421, 426 (E.D.N.C. 1991); *In re Grand Jury Proceedings*, 727 F.2d 1352, 1355 (4th Cir. 1984) (attorney-client privilege "impedes [the] full and free discovery of truth, and is in derogation of the public's right to every man's evidence") (quotations and citations omitted). The

attorney-client privilege "is not favored by the federal courts." *In re Grand Jury Proceedings*, 727 F.2d at 1355 (internal quotations omitted); *Atwood v. Burlington Indus. Equity, Inc.*, 908 F. Sup. 319, 322 (M.D.N.C. 1995) (*quoting In re Grand Jury*, 727 F.2d 1352). Accordingly, courts have held that the privilege should be "strictly construe[d]" to mitigate its effects on discovery. *Martin*, 136 F.R.D. at 426; *see also In re Grand Jury Proceedings*, 727 F.2d at 1355 ("the privilege is to be strictly confined within the narrowest possible limits consistent with the logic of its principle.") (quotations omitted).

Far from being narrowly construed, Defendants crafted their second category of documents to shield the broadest possible number of documents from both production and identification *via* a privilege log in an apparent effort to circumvent the rules of discovery. Beyond its scope, what makes Defendants' proposal so troubling is that if the privilege log requirement is waived, Defendants could withhold all of these documents without ever showing that the attorney-client privilege was even properly invoked. Indeed, by proposing these additional categories of documents that would neither be produced nor logged at this stage, the Defendants are introducing an abstract dispute regarding legislative privilege, and/or other potential privileges that they may claim applies to certain documents or other materials.

Critically, Defendants bear the burden of proving that the attorney-client privilege applies. *Atwood*, 908 F. Supp. at 322 ("The burden is on the proponent of the attorney-client privilege to demonstrate its applicability."); *United States v. Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982) (same). This burden includes proof that "the asserted holder of the privilege is or sought to become a client." *Martin*, 136 F.R.D. at 425; *Jones*, 696 F.2d at

1072 (same). It is far from clear at this point that that burden has been met in this case. Indeed, as a practical matter, there is no way that every agency or official in the State of North Carolina is, or sought to become, a client of defense counsel. If this were true, that would necessarily mean that every member of the General Assembly, including those legislators that opposed H.B. 589 and are friendly to Plaintiffs' position, are represented by defense counsel in this case. Importantly, even if Defendants claim that each and every agency or official in the State of North Carolina is a client of Defendants' counsel, because Defendants' proposed language eliminates the need to log such communications, there would be no way for Plaintiffs to challenge Defendants' invocation of the attorney-client privilege.

Notably, in seeking to justify their broad exemption from the privilege log requirement, Defendants attempt to analogize this situation to cases where a privilege log was not required. *See* 1/2/14 Defs.' Br. at 13 [ECF No. 045]. The cases Defendants rely on for this proposition are inapposite here for at least two reasons. First, none of these cases involved a suit against a State or local government where the scope of the attorney-client privilege was unclear. *See Frye v. Dan Ryan Builders, Inc.*, Civil Action No. 3:10-CV-39, 2011 WL 666326, at *3 (N.D.W.V. Feb. 11, 2011) (defendant Dan Ryan Builders, Inc. asserting attorney-client privilege); *United States v. Bouchard Transp., Inc.*, No. 08-CV-4490, 2010 WL 1529248, at *1 (E.D.N.Y. April 14, 2010) (defendants Bouchard Transportation, et al. arguing that documents were created in anticipation of litigation); *Capitol Records, Inc. v. MP3Tunes, LLC*, 261 F.R.D. 44, 48 (S.D.N.Y. 2009) (defendant MP3Tunes, LLC objecting on privilege grounds); *Ryan Inv. Corp. v. Pedregal*

de Cabo San Luca, 2009 WL 5114077, No. C 06-3219, at *3 (N.D. Cal. Dec. 18, 2009) (defendants Pedregal de Cabo San Lucas, et al. asserting attorney-client privilege and work product doctrine). Second, in the cases cited by Defendants—unlike here—the court was able to assume in those cases that attorney-client communications that post-dated the initiation of litigation pertained to the prosecution or defense of the litigation. *See, e.g.*, *Ryan Inv. Corp.*, 2009 WL 5114077, at *3 (noting that "counsel's communications with the client and work product developed once the litigation commences are presumptively privileged"); *Capitol Records, Inc.*, 261 F.R.D. at 51 (recognizing that "at some point in most civil suits the focus of the principals' discussions shifts from the acts or omissions giving rise to the claims to the prosecution or defense of the lawsuit"). That assumption does not ring true here, particularly if defense counsel represents agencies and officials involved in the implementation of H.B. 589. Indeed, it is not yet clear how each provision in H.B. 589 will be implemented, making it more than likely that some documents exchanged with defense counsel will pertain to the implementation or administration of the law, as opposed to the defense of the lawsuit. *See, e.g.*, *Martin*, 136 F.R.D. at 427 (finding the attorney-client privilege inapplicable to various documents withheld by the Governor of North Carolina because they (1) "occurred incident to a request for . . . political, not legal, advice," (2) did not reveal confidential communications, or (3) could not have been expected to remain confidential).

Under Defendants' proposed language, there would be no way for Plaintiffs to contest Defendants' failure to produce documents that are in fact discoverable—a point

acknowledged in one of Defendants' own cases. *See Bouchard Transp.*, 2010 WL 1529248, at *2 ("[w]ithout an exhaustive privilege log, Plaintiff would be unable to 'specifically identify' all documents to which it believes it is entitled"). Defendants should not be permitted to withhold vast categories of documents without providing any support for their claim of privilege. This is beyond what the federal common law permits and is contrary to the goals of discovery.

B. There Is No Basis for Waiving the Privilege Log Requirement for Documents to Which A Legislative Privilege is Asserted.

Plaintiffs cannot and will not agree to waive the privilege log requirement for Defendants' third category of documents because it is unsupported by precedent and would make it impossible to resolve disputes pertaining to the application of the legislative privilege in a concrete manner. Under defendants' proposed ¶ 33B:

> No privilege log shall be required for any documents created prior to or after August 12, 2013, in the possession, custody or control of members of the General Assembly and their staff or legislative employees that are covered by legislative privilege, legislative immunity, or legislative confidentiality.

12/19/13 Defs.' Mot. at 5 [ECF No. 042]. In other words, to the extent Defendants withhold any documents on grounds of legislative privilege, those documents would be exempt from the privilege log requirement.

It is important to note at the outset that negotiations over the parties' ESI agreement is not the proper forum to decide the applicability of the legislative privilege in this case. Legislative privilege is an issue that should not be decided in the abstract. To that end, Defendants should not be permitted to use the parties' ESI agreement to

preempt discovery disputes over the invocation of the legislative privilege, nor should it be able to use the ESI agreement to avoid discovery of legislative documents wholesale. Contrary to what Defendants have argued, the law on legislative privilege is not "settled." *See* 1/2/14 Defs.' Br. at 13 [ECF No. 045]. Indeed, the Supreme Court has never resolved whether an absolute legislative privilege applies to state or local legislators in federal civil actions. *See Doe v. Pittsylvania Cnty.*, 842 F. Supp. 2d 906, 920 (W.D. Va. 2012) (explaining that "there is no absolute 'evidentiary privilege for state legislators for their legislative acts' . . . [n]or has the Court recognized as absolute testimonial privilege for state or local legislators in civil cases") (quoting *United States v. Gillock*, 445 U.S. 360, 373 (1980)). Various federal courts have held that legislative privilege for state and local legislators is a qualified one, the application of which turns on the outcome of a balancing test that weighs the interests of the individual seeking the information against the individual asserting the privilege. *See, e.g.*, *Ala. Educ. Ass'n v. Bentley*, No. CV-11-S-761-NE, 2013 WL 124306, at*13 (N.D. Ala. Jan. 3, 2013) (explaining that the "legislative privilege is not absolute" and thus courts must "balance the various competing interests" to determine if the legislative privilege applies) (internal quotations omitted); *see also Favors v. Cuomo*, 285 F.R.D. 187, 209 (E.D.N.Y. 2012) (explaining that "the legislative privilege for state lawmakers is, at best, one which is qualified" and depends on a "balance of the interests") (internal quotations omitted); *see also Rodriguez v. Pataki*, 293 F. Supp. 2d 302, 304 (S.D.N.Y. 2003) (affirming magistrate's analysis of legislative privilege, including that it is not absolute and determined by a balancing of interests). Even the Eastern District of North Carolina has taken a qualified view of

legislative privilege, ordering the production of legislative communications that were not otherwise privileged. *Small v. Hunt*, 152 F.R.D. 509, 513 (E.D.N.C. 1994) ("The primary purpose of legislative immunity is not to protect the confidentiality of legislative communications, nor is it to relieve legislators of the burdens associated with document production.").

Setting aside whether legislative privilege should apply in this case or as to which documents, Defendants provide no authority for the proposition that documents withheld on grounds of legislative privilege should be exempt from the privilege log requirement. Indeed, while Defendants cite a handful of cases where the court waived the privilege log requirement, none of these cases involved legislative privilege. *See Frye*, 2011 WL 666326, at *7 (not requiring privilege log for "file related to this litigation" because documents protected by attorney-client privilege and work product doctrine); *Bouchard Transp., Inc.*, 2010 WL 1529248, at *2 (discussing documents prepared in anticipation of litigation); *Capitol Records, Inc.*, 261 F.R.D. at 51 (not requiring defendant to log "any attorney-client communications or work product documents"); *Ryan Inv. Corp.*, 2009 WL 5114077, at *3 (finding that attorney-client communications and work product from after litigation commenced do not have to be logged).

To the contrary, various federal courts have required a privilege log for claims of legislative privilege. *See Favors*, 285 F.R.D. at 223-24 (ordering defendants to supplement descriptions in privilege log to support claim of legislative privilege); *see also Doe v. Nebraska*, 788 F. Supp. 2d 975, 986-87 (D. Neb. 2011) (ordering production or privilege log for documents withheld on privilege grounds, including legislative

privilege, if parties could not reach agreement on discovery); *Young v. City and County of Honolulu*, Civil No. 07-00068, 2008 WL 2676365, at *2 (D. Haw. July 8, 2008) (noting that court ordered production of privilege log for any documents withheld on privilege grounds, including legislative immunity). And the requirement of a privilege log for claims of legislative privilege makes sense—because privilege logs are the *rule*, not the exception. Fed. R. Civ. P. 26(b)(5)(A) (requiring description of documents so that opposing party can assess withholding party's claim of privilege).

Importantly, a privilege log is the only way disputes over legislative privilege in this case can truly be resolved. Documents created by or for the General Assembly will be critical pieces of information in this case because Plaintiffs' claims turn on the intent and impact of voting legislation. Without a privilege log, there would be no way for Plaintiffs to assess what information has been withheld, and whether legislative privilege has been fairly asserted. Defendants should not be given the opportunity to unilaterally withhold responsive documents without being held accountable. A privilege log that includes documents withheld on grounds of legislative privilege is the only way to ensure that Plaintiffs receive all the information to which they are entitled.

III. THE COURT SHOULD REJECT DEFENDANTS' PROPOSAL TO DELETE PARAGRAPH 40.

Plaintiffs object to Defendants' proposal that paragraph 40 be deleted from the parties' ESI Agreement and incorporate here by reference the arguments set forth by the Department of Justice with respect to this paragraph.

CONCLUSION

For the foregoing reasons, Plaintiffs in *North Carolina State Conference of the NAACP, et al. v. McCrory, et al.* and *League of Women Voters of North Carolina, et al. v. State of North Carolina, et al.* respectfully request that the Court reject Defendants' version of paragraphs 9A, 33, and 40 in the ESI order.

Dated: **January 8, 2014**

Respectfully submitted,

By: /s/ *Adam Stein*

Adam Stein (N.C. State Bar # 4145)
Of Counsel
TIN FULTON WALKER & OWEN, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Telephone: (919) 240-7089
E-mail: astein@tinfulton.com

Penda D. Hair
Edward A. Hailes, Jr.
Denise D. Lieberman
Donita Judge
Caitlin Swain
ADVANCEMENT PROJECT
Suite 850
1220 L Street, N.W.
Washington, DC 20005
Telephone: (202) 728-9557
E-mail: phair@advancementproject.com

Irving Joyner (N.C. State Bar # 7830)
P.O. Box 374
Cary, NC 27512
Telephone: (919) 319-8353
E-mail: ijoyner@nccu.edu

/s/ *Daniel T. Donovan*

Thomas D. Yannucci
Daniel T. Donovan
Susan M. Davies
K. Winn Allen
Uzoma Nkwonta
Kimberly D. Rancour
Jodi Wu
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
Telephone: (202) 879-5000
E-mail: tyannucci@kirkland.com

Attorneys for Plaintiffs in North Carolina Conference of NAACP, et al. v. McCrory, et al.

Dated: **January 8, 2014**

Respectfully submitted,

By: /s/ *Dale Ho*

Laughlin McDonald*
ACLU Voting Rights Project
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
Telephone: (404) 500-1235
E-mail: lmcdonald@aclu.org
* *appearing pursuant to Local Rule 83.1(d)*

Anita S. Earls (State Bar # 15597)
Allison J. Riggs (State Bar # 40028)
Clare R. Barnett (State Bar #42678)
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: (919) 323-3380 ext. 115
Facsimile: (919) 323-3942
E-mail: anita@southerncoalition.org

Christopher Brook (State Bar #33838)
ACLU of North Carolina Legal Foundation
P.O. Box 28004
Raleigh, NC 27611-8004
Telephone: (919) 834-3466
Facsimile: (866) 511-1344
E-mail: cbrook@acluofnc.org

Dale Ho*
Julie A. Ebenstein*
ACLU Voting Rights Project
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2693
E-mail: dale.ho@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Attorneys for Plaintiffs in League of Women Voters of North Carolina, et al. v. North Carolina, et al.

CERTIFICATE OF SERVICE

I, Daniel T. Donovan, hereby certify that on **January 8, 2014**, I served Plaintiffs' **Response to Defendants' Brief in Support of Motion Regarding Order on Electronically Stored Documents** with the Clerk of Court using the CM/ECF system in case numbers 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861, which on the same date sent notification of the filing to the following:

Counsel for Plaintiffs

Adam Stein
TIN FULTON WALKER & OWEN, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Telephone: (919) 240-7089
Facsimile: (919) 240-7822
Email: astein@tinfulton.com

Penda D. Hair
Edward A. Hailes
Denise Lieberman
Donita Judge
Caitlin Swain
ADVANCEMENT PROJECT
Suite 850
1220 L Street, N.W.
Washington, DC 20005
Telephone: (202) 728-9557
Email: phair@advancementproject.com

Daniel T. Donovan
Thomas D. Yannucci
Susan M. Davies
K. Winn Allen
Uzoma Nkwonta
Kimberly D. Rancour
Jodi Wu
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
Telephone: (202) 879-5174
Facsimile: (202) 879-5200
E-mail: daniel.donovan@kirkland.com

Irving Joyner, Esq.
PO Box 374
Cary, NC 27512
Email: ijoyner@nccu.edu

Counsel for Plaintiffs in League of Women Voters of North Carolina, et al. v. North Carolina, et al.

Anita S. Earls (State Bar # 15597)
Allison J. Riggs (State Bar # 40028)
Clare R. Barnett (State Bar #42678)
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: (919) 323-3380 ext. 115
Facsimile: (919) 323-3942
E-mail: anita@southerncoalition.org

Christopher Brook (State Bar #33838)
ACLU of NORTH CAROLINA LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611-8004
Telephone: (919) 834-3466
Facsimile: (866) 511-1344
E-mail: cbrook@acluofnc.org

Dale Ho*
Julie A. Ebenstein*
ACLU VOTING RIGHTS PROJECT
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2693
E-mail: dale.ho@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Laughlin McDonald*
ACLU VOTING RIGHTS PROJECT
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
Telephone: (404) 500-1235
E-mail: lmcdonald@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Counsel for Plaintiffs in US v. North Carolina, et al.
T. Christian Herren, Jr.
John A. Russ IV
Catherine Meza
David G. Cooper
Spencer R. Fisher
Elizabeth Ryan
Attorneys, Voting Section
Civil Rights Division
U.S. DEPARTMENT OF JUSTICE
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (800) 253-3931
Facsimile: (202) 307-3961
E-mail: john.russ@usdoj.gov
E-mail: catherine.meza@usdoj.gov

Gill P. Beck (State Bar # 13175)
Special Assistant United States Attorney
OFFICE OF THE UNITED STATES ATTORNEY
United States Courthouse
100 Otis Street
Asheville, NC 28801
Telephone: (828) 259-0645
E-mail: gill.beck@usdoj.gov

Counsel for Defendant Patrick McCrory
Karl S. Bowers, Jr.
BOWERS LAW OFFICE LLC
P.O. Box 50549
Columbia, SC 29250
Telephone: (803) 260-4124
Facsimile: (803) 250-3985
E-mail: butch@butchbowers.com

Robert C. Stephens
General Counsel
OFFICE OF THE GOVERNOR OF NORTH CAROLINA
20301 Mail Service Center
Raleigh, North Carolina 27699
Telephone: (919) 814-2027
Facsimile: (919) 733-2120
E-mail: bob.stephens@nc.gov
Of Counsel

Counsel for Defendants State of North Carolina and Members of the State Board of Elections
Alexander Peters, Esq.
NC DEPARTMENT OF JUSTICE
PO Box 629
Raleigh, NC 27602
Telephone: (919) 716-6913
Facsimile: (919) 716-6763
E-mail: apeters@ncdoj.gov

Thomas A. Farr, Esq.
Phillip J. Strach, Esq.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C
4208 Six Forks Road
Raleigh, NC 27609
Telephone: (919) 787-9700
Facsimile: (919)783-9412
E-mail: thomas.farr@ogletreedeakins.com
E-mail: phil.strach@ogletreedeakins.com

Respectfully Submitted,

/s/ Daniel T. Donovan
Daniel T. Donovan
Kirkland & Ellis LLP
655 Fifteenth St., N.W.
Washington, DC 20005
Telephone: (202) 879-5174
Facsimile: (202) 879-5200
E-mail: daniel.donovan@kirkland.com

/s/ Adam Stein
Adam Stein (N.C. State Bar #4145)
TIN FULTON WALKER & OWEN, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Telephone: (919) 240-7089
astein@tinfulton.com