

# Exhibit A

**From:** [O'Connor, Bridget K.](#)  
**To:** [Strach, Phillip J.](#); [Donovan, Daniel T.](#); [Allen, Winn](#); [Pocklington, Amy M.](#)  
**Cc:** [Russ, John \(CRT\)](#); [Ryan, Elizabeth \(CRT\)](#); [Farr, Thomas A.](#); [apeters@ncdoj.com](#); [butch@butchbowers.com](#); [AllisonRiggs@southerncoalition.org](#); [AnitaEarls@southerncoalition.org](#); [\\*AStein@tinfullton.com](#); [bob.stephens@nc.gov](#); [cbrook@acluofnc.org](#); [dale.ho@aclu.org](#); [Cooper, David \(CRT\)](#); [\\*dlieberman@advancementproject.org](#); [Beck, Gill \(USANCW\)](#); [\\*jjoyner@NCCU.EDU](#); [jebenstein@aclu.org](#); [Rancour, Kimberly D.](#); [lmcdonald@aclu.org](#); [\\*phair@advancementproject.org](#); [Fisher, Spencer \(CRT\)](#); [Yannucci, Thomas D.](#); [JDevaney@perkinscoie.com](#); [melias@perkinscoie.com](#); [efrost@perkinscoie.com](#); [Meza, Catherine \(CRT\)](#)  
**Subject:** RE: NC HB 589 - Meet and Confer Follow Up  
**Date:** Wednesday, February 19, 2014 7:33:00 PM

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Phil:

Following up on Defendants' request to further prioritize our requests and refine our prior prioritization proposals, the Plaintiffs make the following suggestion:

1. The SBoE email searches that generated few documents (email searches 30, 32, 33, 34, 35, 42, 43 and 44), should be reviewed immediately and in total, reviewed without any date prioritization, and produced by Friday (2/21);
2. The SBoE email searches that generated less than 600 documents (email searches 4, 6, 13, 18, 25, 40, 41), should be reviewed this week and in total, reviewed without any date prioritization, and produced by Tuesday (2/24);
3. The following SBoE email searches (email searches 1, 29), should be reviewed by next week, reviewed without any date prioritization, and produced by Thursday (2/26);
4. The remaining SBoE email searches should be reviewed by starting presently and working your way back in time. We remain ready to discuss any searches that you believe are overbroad or that should have date restrictions. (Please see my prior email for examples of searches where we believe the search might have been run incorrectly and thus generated lots of results inadvertently.) We should start receiving documents from these reviews by Friday (2/28) and the review should be completed by March 10.

We offer this suggested path forward with full reservation of our rights and belief that there should not be any date restriction without further explanation by Defendants and agreement by Plaintiffs.

Sincerely,

**Bridget K. O'Connor**  
KIRKLAND & ELLIS LLP  
655 Fifteenth Street, NW, Suite 1200  
Washington, D.C. 20005  
Ph: (202) 879-5048 F: (202) 879-5200

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**From:** Strach, Phillip J. [mailto:Phil.Strach@ogletreedeakins.com]  
**Sent:** Wednesday, February 19, 2014 10:36 AM  
**To:** Donovan, Daniel T.; O'Connor, Bridget K.; Allen, Winn; Pocklington, Amy M.  
**Cc:** Russ, John (CRT); Ryan, Elizabeth (CRT); Farr, Thomas A.; apeters@ncdoj.com; butch@butchbowers.com; AllisonRiggs@southerncoalition.org; AnitaEarls@southerncoalition.org; \*AStein@tinfullton.com; bob.stephens@nc.gov; cbrook@acluofnc.org; dale.ho@aclu.org; Cooper, David (CRT); \*dlieberman@advancementproject.org; Beck, Gill (USANCW); \*jjoyner@NCCU.EDU; jebenstein@aclu.org; Rancour, Kimberly D.; lmcdonald@aclu.org; \*phair@advancementproject.org; Fisher, Spencer (CRT); Yannucci, Thomas D.; JDevaney@perkinscoie.com; melias@perkinscoie.com; efrost@perkinscoie.com; Meza, Catherine (CRT)  
**Subject:** RE: NC HB 589 - Meet and Confer Follow Up

Dan: as I understand it, "files" are individual documents or records and "hits" are the number of times the search terms appear in the "files". Phil

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**From:** Donovan, Daniel T. [<mailto:ddonovan@kirkland.com>]  
**Sent:** Wednesday, February 19, 2014 10:23 AM  
**To:** Strach, Phillip J.; O'Connor, Bridget K.; Allen, Winn; Pocklington, Amy M.  
**Cc:** Russ, John (CRT); Ryan, Elizabeth (CRT); Farr, Thomas A.; [apeters@ncdoj.com](mailto:apeters@ncdoj.com); [butch@butchbowers.com](mailto:butch@butchbowers.com); [AllisonRiggs@southerncoalition.org](mailto:AllisonRiggs@southerncoalition.org); [AnitaEarls@southerncoalition.org](mailto:AnitaEarls@southerncoalition.org); [\\*AStein@tinfulton.com](mailto:*AStein@tinfulton.com); [bob.stephens@nc.gov](mailto:bob.stephens@nc.gov); [cbrook@acluofnc.org](mailto:cbrook@acluofnc.org); [dale.ho@aclu.org](mailto:dale.ho@aclu.org); Cooper, David (CRT); [\\*dlieberman@advancementproject.org](mailto:*dlieberman@advancementproject.org); Beck, Gill (USANCW); [\\*jjoyner@NCCU.EDU](mailto:*jjoyner@NCCU.EDU); [jebenstein@aclu.org](mailto:jebenstein@aclu.org); Rancour, Kimberly D.; [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org); [\\*phair@advancementproject.org](mailto:*phair@advancementproject.org); Fisher, Spencer (CRT); Yannucci, Thomas D.; [JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com); [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [efrost@perkinscoie.com](mailto:efrost@perkinscoie.com); Meza, Catherine (CRT)  
**Subject:** RE: NC HB 589 - Meet and Confer Follow Up

Thank you Phil. Can you define the term "hits" and "files" as used in the spreadsheet. We are trying to understand the differences between the two. Thanks again.

Daniel Donovan  
Kirkland & Ellis LLP  
202.879.5174  
[ddonovan@kirkland.com](mailto:ddonovan@kirkland.com)

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**From:** Strach, Phillip J. [<mailto:Phil.Strach@ogletreedeakins.com>]  
**Sent:** Wednesday, February 19, 2014 10:12 AM  
**To:** O'Connor, Bridget K.; Allen, Winn; Pocklington, Amy M.  
**Cc:** Russ, John (CRT); Ryan, Elizabeth (CRT); Farr, Thomas A.; [apeters@ncdoj.com](mailto:apeters@ncdoj.com); [butch@butchbowers.com](mailto:butch@butchbowers.com); [AllisonRiggs@southerncoalition.org](mailto:AllisonRiggs@southerncoalition.org); [AnitaEarls@southerncoalition.org](mailto:AnitaEarls@southerncoalition.org); [\\*AStein@tinfulton.com](mailto:*AStein@tinfulton.com); [bob.stephens@nc.gov](mailto:bob.stephens@nc.gov); [cbrook@acluofnc.org](mailto:cbrook@acluofnc.org); [dale.ho@aclu.org](mailto:dale.ho@aclu.org); Cooper, David (CRT); Donovan, Daniel T.; [\\*dlieberman@advancementproject.org](mailto:*dlieberman@advancementproject.org); Beck, Gill (USANCW); [\\*jjoyner@NCCU.EDU](mailto:*jjoyner@NCCU.EDU); [jebenstein@aclu.org](mailto:jebenstein@aclu.org); Rancour, Kimberly D.; [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org); [\\*phair@advancementproject.org](mailto:*phair@advancementproject.org); Fisher, Spencer (CRT); Yannucci, Thomas D.; [JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com); [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [efrost@perkinscoie.com](mailto:efrost@perkinscoie.com); Meza, Catherine (CRT)  
**Subject:** RE: NC HB 589 - Meet and Confer Follow Up

Bridget:

Attached is the spreadsheet containing the legislative search. We do not have the search terms broken down by custodian.

Regards,

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
4208 Six Forks Road, Suite 1100 | Raleigh, NC 27609 | Telephone: 919-789-3179 | Fax: 919-783-9412  
[phil.strach@ogletreedeakins.com](mailto:phil.strach@ogletreedeakins.com) | [www.ogletreedeakins.com](http://www.ogletreedeakins.com)

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**From:** O'Connor, Bridget K. [<mailto:boconnor@kirkland.com>]  
**Sent:** Monday, February 17, 2014 6:15 PM  
**To:** Strach, Phillip J.; Allen, Winn; Pocklington, Amy M.  
**Cc:** Russ, John (CRT); Ryan, Elizabeth (CRT); Farr, Thomas A.; [apeters@ncdoj.com](mailto:apeters@ncdoj.com); [butch@butchbowers.com](mailto:butch@butchbowers.com); [AllisonRiggs@southerncoalition.org](mailto:AllisonRiggs@southerncoalition.org); [AnitaEarls@southerncoalition.org](mailto:AnitaEarls@southerncoalition.org); [\\*AStein@tinfulton.com](mailto:*AStein@tinfulton.com); [bob.stephens@nc.gov](mailto:bob.stephens@nc.gov); [cbrook@acluofnc.org](mailto:cbrook@acluofnc.org); [dale.ho@aclu.org](mailto:dale.ho@aclu.org); Cooper, David (CRT); Donovan, Daniel T.; [\\*dlieberman@advancementproject.org](mailto:*dlieberman@advancementproject.org); Beck, Gill (USANCW); [\\*jjoyner@NCCU.EDU](mailto:*jjoyner@NCCU.EDU); [jebenstein@aclu.org](mailto:jebenstein@aclu.org); Rancour, Kimberly D.; [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org); [\\*phair@advancementproject.org](mailto:*phair@advancementproject.org); Fisher, Spencer (CRT); Yannucci, Thomas D.; [JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com); [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [efrost@perkinscoie.com](mailto:efrost@perkinscoie.com); Meza, Catherine (CRT)  
**Subject:** RE: NC HB 589 - Meet and Confer Follow Up

Phil:

Thank you for providing the spreadsheet with the SBOE search term results. Please also send the legislative search

you referenced. Plaintiffs agree that your providing us with that list will not constitute a waiver of any legislative immunity, privilege, or confidentiality that may apply in this case.

Further, as we attempt to develop an approach to prioritization that will best facilitate the prompt production of materials in advance of the preliminary injunction briefing and hearing, would you please also provide us with the following information?

- the SBOE search term results de-duped both by custodian and by search term set (i.e., so that the same document would not be appearing in the totals for multiple of the search term sets in the list); and
- search term results broken out by custodian.

In the interest of getting the reviews and productions going in the near term, Plaintiffs will agree to your prioritizing the review and production of documents hits from 2013 to present. This agreement as to prioritizing such date ranges in no way impacts our request for the production of documents from earlier time periods, as appropriate to certain of the requests.

Finally, with respect to your note about “many of the current search terms” being “just too broad in general to generate meaningful and relevant data,” Plaintiffs are happy to work with Defendants to refine the agreed-upon list of search terms in response to the results that you are seeing in your searches. To date, we have not received any proposed modifications to the Defendants’ search terms. Specifically, please identify any search terms that you are finding to yield unduly high numbers of false positive hits and the reasons you believe they are generating irrelevant documents. We believe that obtaining the search term distribution data de-duped and by custodian as described above will be of significant help in assessing the results and refining the terms in this manner. We would also call your attention to certain of the actual searches as listed in the SBOE search terms report you sent this afternoon, which appear to have certain typos in the modifiers, and may result in artificially high hit numbers. (We were not sure if this list showed the actual searches, as run, but if so, it would be worth checking on examples like those highlighted below.)

5	(crawford W/30 "Indiana") OR (crawford W/30 "supreme Court") OR (crawford w/30 "vot*") OR (crawford 2/30 "id") OR (crawford w/30 "i.d.") OR (crawford w/30 "identif*")	22,124
7	(Shelby W/30 "Indiana") OR (Shelby W/30 "supreme Court") OR (Shelby w/30 "vot*") OR (Shelby 2/30 "id") OR (Shelby w/30 "i.d.") OR (Shelby--`-w/30 "identif*") [THIS IS THE #5 TERMS, NOT #7]	2,442

We look forward to receiving the additional information described above and continuing to work with Defendants to expedite the review and production of responsive emails and other electronic documents.

Sincerely,  
Bridget

**Bridget K. O'Connor**  
KIRKLAND & ELLIS LLP  
655 Fifteenth Street, NW, Suite 1200  
Washington, D.C. 20005  
Ph: (202) 879-5048 F: (202) 879-5200

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**From:** Strach, Phillip J. [<mailto:Phil.Strach@ogletreedeakins.com>]  
**Sent:** Monday, February 17, 2014 3:36 PM  
**To:** Allen, Winn; Pocklington, Amy M.  
**Cc:** Russ, John (CRT); Ryan, Elizabeth (CRT); Farr, Thomas A.; [apeters@ncdoj.com](mailto:apeters@ncdoj.com); [butch@butchbowers.com](mailto:butch@butchbowers.com); [AllisonRiggs@southerncoalition.org](mailto:AllisonRiggs@southerncoalition.org); [AnitaEarls@southerncoalition.org](mailto:AnitaEarls@southerncoalition.org); [\\*AStein@tinfulton.com](mailto:*AStein@tinfulton.com); [bob.stephens@nc.gov](mailto:bob.stephens@nc.gov); [cbrook@acluofnc.org](mailto:cbrook@acluofnc.org); [dale.ho@aclu.org](mailto:dale.ho@aclu.org); Cooper, David (CRT); Donovan, Daniel T.; [\\*dlieberman@advancementproject.org](mailto:*dlieberman@advancementproject.org); Beck, Gill (USANCW); [\\*ijoyner@NCCU.EDU](mailto:*ijoyner@NCCU.EDU); [jebenstein@aclu.org](mailto:jebenstein@aclu.org); Rancour, Kimberly D.; [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org); [\\*phair@advancementproject.org](mailto:*phair@advancementproject.org); Fisher, Spencer (CRT); Yannucci, Thomas D.; O'Connor, Bridget K.; [JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com); [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [efrost@perkinscoie.com](mailto:efrost@perkinscoie.com); Meza, Catherine (CRT)

**Subject:** RE: NC HB 589 - Meet and Confer Follow Up

Winn:

Attached is a spreadsheet breaking down the number of individual files or records per search term for the State Board of Elections. We don't have the information broken down by custodian. Please note this information is being provided subject to and without waiving any objection, privileges or immunities and is provided solely for the purpose of engaging in good faith attempts to resolve this discovery issue. While we have a similar breakdown for the legislative search, we will only provide it if Plaintiffs agree that providing it does not constitute any waiver of legislative immunity, privilege, or confidentiality that may apply in this case. If Plaintiffs so agree, please let me know. Please let us know your proposal for prioritization asap.

As to your first question regarding the review process, we are not sure what you mean. In general, we will review the ESI in a litigation software program, Relativity, specifically designed for ESI review.

Also, as we mentioned on the call today, while prioritization would certainly assist with the review, we are also concerned with the unreasonableness of having to review over 700,000 individual files (plus possibly more since, as mentioned, the agencies' software could not process some of the search terms) and with reviewing anything outside of the 2013 timeframe. As stated in our response to the motion to compel, we are also concerned about seemingly endless requests for production and the likelihood that many of the current search terms are just too broad in general to generate meaningful and relevant data especially when compared against the cost of obtaining and reviewing it. Accordingly, please let us know if plaintiffs will continue to stand on their position that everything plaintiffs have requested is relevant and will not be narrowed irrespective of any prioritizing in the near term.

Regards,

Phillip J. Strach | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
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[phil.strach@ogletreedeakins.com](mailto:phil.strach@ogletreedeakins.com) | [www.ogletreedeakins.com](http://www.ogletreedeakins.com)

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**From:** Allen, Winn [<mailto:winn.allen@kirkland.com>]  
**Sent:** Monday, February 17, 2014 2:29 PM  
**To:** Pocklington, Amy M.  
**Cc:** Russ, John (CRT); Strach, Phillip J.; Ryan, Elizabeth (CRT); Farr, Thomas A.; [apeters@ncdoj.com](mailto:apeters@ncdoj.com); [butch@butchbowers.com](mailto:butch@butchbowers.com); [AllisonRiggs@southerncoalition.org](mailto:AllisonRiggs@southerncoalition.org); [AnitaEarls@southerncoalition.org](mailto:AnitaEarls@southerncoalition.org); [\\*ASTEIN@tinfulton.com](mailto:*ASTEIN@tinfulton.com); [bob.stephens@nc.gov](mailto:bob.stephens@nc.gov); [cbrook@acluofnc.org](mailto:cbrook@acluofnc.org); [dale.ho@aclu.org](mailto:dale.ho@aclu.org); Cooper, David (CRT); Donovan, Daniel T.; [\\*dlieberman@advancementproject.org](mailto:*dlieberman@advancementproject.org); Beck, Gill (USANCW); [\\*jjoyner@NCCU.EDU](mailto:*jjoyner@NCCU.EDU); [jebenstein@aclu.org](mailto:jebenstein@aclu.org); Rancour, Kimberly D.; [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org); [\\*phair@advancementproject.org](mailto:*phair@advancementproject.org); Fisher, Spencer (CRT); Yannucci, Thomas D.; O'Connor, Bridget K.; [JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com); [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [efrost@perkinscoie.com](mailto:efrost@perkinscoie.com); Meza, Catherine (CRT)  
**Subject:** Re: NC HB 589 - Meet and Confer Follow Up

Counsel:

In order to consider your request that Plaintiffs prioritize the Defendants' review of documents, please let us know what ESI defendants have reviewed to date so that we can formulate a prioritization proposal that is consistent with your review process.

Also please send us the search results you obtained from running search terms in two ways. First, please send us the hits per search term. Second, please send us the hits per search term per custodian.

Please send us this information today as that will enable us to consider your request for prioritization.

Best,

Winn

On Feb 17, 2014, at 10:07 AM, "Pocklington, Amy M." <[Amy.Pocklington@ogletreedeakins.com](mailto:Amy.Pocklington@ogletreedeakins.com)> wrote:

Counsel, please use the below for the 11 call today.

18003304757

9197893179

**PLEASE NOTE NEW ADDRESS**

Amy M. Pocklington | Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
Riverfront Plaza - West Tower, 901 East Byrd Street, Suite 900 | Richmond, VA 23219 |  
Telephone: 804-663-2335 | Fax: 804-225-8641  
[amy.pocklington@ogletreedeakins.com](mailto:amy.pocklington@ogletreedeakins.com) | [www.ogletreedeakins.com](http://www.ogletreedeakins.com) | [Bio](#)

---

**From:** Russ, John (CRT) [<mailto:John.Russ@usdoj.gov>]  
**Sent:** Monday, February 17, 2014 10:02 AM  
**To:** Strach, Phillip J.; Ryan, Elizabeth (CRT); Pocklington, Amy M.; Farr, Thomas A.;  
'[apeters@ncdoj.com](mailto:apeters@ncdoj.com)'; '[butch@butchbowers.com](mailto:butch@butchbowers.com)'  
**Cc:** 'AllisonRiggs@southerncoalition.org'; 'AnitaEarls@southerncoalition.org';  
'[astein@tinfulton.com](mailto:astein@tinfulton.com)'; '[bob.stephens@nc.gov](mailto:bob.stephens@nc.gov)'; '[cbrook@acluofnc.org](mailto:cbrook@acluofnc.org)'; '[dale.ho@aclu.org](mailto:dale.ho@aclu.org)';  
Cooper, David (CRT); '[ddonovan@kirkland.com](mailto:ddonovan@kirkland.com)'; '[dlieberman@advancementproject.org](mailto:dlieberman@advancementproject.org)';  
Beck, Gill (USANCW); '[ijoyner@nccu.edu](mailto:ijoyner@nccu.edu)'; '[jebenstein@aclu.org](mailto:jebenstein@aclu.org)';  
'[kimberly.knudson@kirkland.com](mailto:kimberly.knudson@kirkland.com)'; '[lmcdonald@aclu.org](mailto:lmcdonald@aclu.org)'; '[phair@advancementproject.org](mailto:phair@advancementproject.org)';  
Fisher, Spencer (CRT); '[tyannucci@kirkland.com](mailto:tyannucci@kirkland.com)'; '[winn.allen@kirkland.com](mailto:winn.allen@kirkland.com)';  
'[boconnor@kirkland.com](mailto:boconnor@kirkland.com)'; '[JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com)'; '[melias@perkinscoie.com](mailto:melias@perkinscoie.com)';  
'[efrost@perkinscoie.com](mailto:efrost@perkinscoie.com)'; Meza, Catherine (CRT)  
**Subject:** Re: NC HB 589 - Meet and Confer Follow Up

Phil,

What call-in number would you like us to use at 11?

Thank you,

Bert

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**From:** Russ, John (CRT)  
**Sent:** Friday, February 14, 2014 07:39 PM Eastern Standard Time  
**To:** 'Phil.Strach@ogletreedeakins.com' <[Phil.Strach@ogletreedeakins.com](mailto:Phil.Strach@ogletreedeakins.com)>; Ryan, Elizabeth (CRT); 'Amy.Pocklington@ogletreedeakins.com' <[Amy.Pocklington@ogletreedeakins.com](mailto:Amy.Pocklington@ogletreedeakins.com)>; 'thomas.farr@ogletreedeakins.com' <[thomas.farr@ogletreedeakins.com](mailto:thomas.farr@ogletreedeakins.com)>; 'apeters@ncdoj.com' <[apeters@ncdoj.com](mailto:apeters@ncdoj.com)>; 'butch@butchbowers.com' <[butch@butchbowers.com](mailto:butch@butchbowers.com)>  
**Cc:** 'AllisonRiggs@southerncoalition.org' <[AllisonRiggs@southerncoalition.org](mailto:AllisonRiggs@southerncoalition.org)>; 'AnitaEarls@southerncoalition.org' <[AnitaEarls@southerncoalition.org](mailto:AnitaEarls@southerncoalition.org)>; 'astein@tinfulton.com' <[astein@tinfulton.com](mailto:astein@tinfulton.com)>; 'bob.stephens@nc.gov' <[bob.stephens@nc.gov](mailto:bob.stephens@nc.gov)>; 'cbrook@acluofnc.org' <[cbrook@acluofnc.org](mailto:cbrook@acluofnc.org)>; 'dale.ho@aclu.org' <[dale.ho@aclu.org](mailto:dale.ho@aclu.org)>; Cooper, David (CRT); 'ddonovan@kirkland.com' <[ddonovan@kirkland.com](mailto:ddonovan@kirkland.com)>; 'dlieberman@advancementproject.org' <[dlieberman@advancementproject.org](mailto:dlieberman@advancementproject.org)>; Beck, Gill (USANCW); 'ijoyner@nccu.edu' <[ijoyner@nccu.edu](mailto:ijoyner@nccu.edu)>; 'jebenstein@aclu.org' <[jebenstein@aclu.org](mailto:jebenstein@aclu.org)>; 'kimberly.knudson@kirkland.com' <[kimberly.knudson@kirkland.com](mailto:kimberly.knudson@kirkland.com)>; 'lmcdonald@aclu.org' <[lmcdonald@aclu.org](mailto:lmcdonald@aclu.org)>; 'phair@advancementproject.org' <[phair@advancementproject.org](mailto:phair@advancementproject.org)>; Fisher, Spencer (CRT); 'tyannucci@kirkland.com' <[tyannucci@kirkland.com](mailto:tyannucci@kirkland.com)>; 'winn.allen@kirkland.com' <[winn.allen@kirkland.com](mailto:winn.allen@kirkland.com)>; 'boconnor@kirkland.com' <[boconnor@kirkland.com](mailto:boconnor@kirkland.com)>; 'JDevaney@perkinscoie.com' <[JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com)>; 'melias@perkinscoie.com' <[melias@perkinscoie.com](mailto:melias@perkinscoie.com)>; 'efrost@perkinscoie.com' <[efrost@perkinscoie.com](mailto:efrost@perkinscoie.com)>; Meza, Catherine (CRT)  
**Subject:** Re: NC HB 589 - Meet and Confer Follow Up

Phil,

The United States can participate at that time.

Bert Russ

---

**From:** Strach, Phillip J. [<mailto:Phil.Strach@ogletreedeakins.com>]  
**Sent:** Friday, February 14, 2014 06:02 PM Eastern Standard Time  
**To:** Ryan, Elizabeth (CRT); Pocklington, Amy M. <[Amy.Pocklington@ogletreedeakins.com](mailto:Amy.Pocklington@ogletreedeakins.com)>; Farr, Thomas A. <[thomas.farr@ogletreedeakins.com](mailto:thomas.farr@ogletreedeakins.com)>; Peters, Alec <[apeters@ncdoj.com](mailto:apeters@ncdoj.com)>; [butch@butchbowers.com](mailto:butch@butchbowers.com) <[butch@butchbowers.com](mailto:butch@butchbowers.com)>  
**Cc:** Allison Riggs <[AllisonRiggs@southerncoalition.org](mailto:AllisonRiggs@southerncoalition.org)>; Anita Earls <[AnitaEarls@southerncoalition.org](mailto:AnitaEarls@southerncoalition.org)>; [astein@tinfulton.com](mailto:astein@tinfulton.com) <[astein@tinfulton.com](mailto:astein@tinfulton.com)>; [bob.stephens@nc.gov](mailto:bob.stephens@nc.gov) <[bob.stephens@nc.gov](mailto:bob.stephens@nc.gov)>; [cbrook@acluofnc.org](mailto:cbrook@acluofnc.org) <[cbrook@acluofnc.org](mailto:cbrook@acluofnc.org)>; [dale.ho@aclu.org](mailto:dale.ho@aclu.org) <[dale.ho@aclu.org](mailto:dale.ho@aclu.org)>; Cooper, David (CRT); [ddonovan@kirkland.com](mailto:ddonovan@kirkland.com) <[ddonovan@kirkland.com](mailto:ddonovan@kirkland.com)>; [dlieberman@advancementproject.org](mailto:dlieberman@advancementproject.org) <[dlieberman@advancementproject.org](mailto:dlieberman@advancementproject.org)>; Beck, Gill (USANCW); [ijoyner@ncu.edu](mailto:ijoyner@ncu.edu) <[ijoyner@ncu.edu](mailto:ijoyner@ncu.edu)>; [jebenstein@aclu.org](mailto:jebenstein@aclu.org) <[jebenstein@aclu.org](mailto:jebenstein@aclu.org)>; [kimberly.knudson@kirkland.com](mailto:kimberly.knudson@kirkland.com) <[kimberly.knudson@kirkland.com](mailto:kimberly.knudson@kirkland.com)>; [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org) <[lmcdonald@aclu.org](mailto:lmcdonald@aclu.org)>; [phair@advancementproject.org](mailto:phair@advancementproject.org) <[phair@advancementproject.org](mailto:phair@advancementproject.org)>; Fisher, Spencer (CRT); [tyannucci@kirkland.com](mailto:tyannucci@kirkland.com) <[tyannucci@kirkland.com](mailto:tyannucci@kirkland.com)>; [winn.allen@kirkland.com](mailto:winn.allen@kirkland.com) <[winn.allen@kirkland.com](mailto:winn.allen@kirkland.com)>; O'Connor, Bridget K. <[boconnor@kirkland.com](mailto:boconnor@kirkland.com)>; Russ, John (CRT); [JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com) <[JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com)>; [melias@perkinscoie.com](mailto:melias@perkinscoie.com) <[melias@perkinscoie.com](mailto:melias@perkinscoie.com)>; [efrost@perkinscoie.com](mailto:efrost@perkinscoie.com) <[efrost@perkinscoie.com](mailto:efrost@perkinscoie.com)>; Meza, Catherine (CRT)  
**Subject:** RE: NC HB 589 - Meet and Confer Follow Up

Counsel:

Counsel for defendants request a meet and confer with plaintiffs' counsel on Monday, February 17, at 11:00 am. The conference would relate to the burdens defendants are facing attempting to comply with plaintiffs' voluminous requests for production. While we continue to also work to address the issues raised by counsel for the United States below, we may also be in a position to discuss the issue raised below regarding legislative immunity and the legislative record.

Thank you.

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**From:** Ryan, Elizabeth (CRT) [<mailto:Elizabeth.Ryan@usdoj.gov>]  
**Sent:** Friday, February 07, 2014 5:15 PM  
**To:** Pocklington, Amy M.; Farr, Thomas A.; Peters, Alec; [butch@butchbowers.com](mailto:butch@butchbowers.com)  
**Cc:** Strach, Phillip J.; Allison Riggs; Anita Earls; [astein@tinfulton.com](mailto:astein@tinfulton.com); [bob.stephens@nc.gov](mailto:bob.stephens@nc.gov); [cbrook@acluofnc.org](mailto:cbrook@acluofnc.org); [dale.ho@aclu.org](mailto:dale.ho@aclu.org); Cooper, David (CRT); [ddonovan@kirkland.com](mailto:ddonovan@kirkland.com); [dlieberman@advancementproject.org](mailto:dlieberman@advancementproject.org); Beck, Gill (USANCW); [ijoyner@ncu.edu](mailto:ijoyner@ncu.edu); [jebenstein@aclu.org](mailto:jebenstein@aclu.org); [kimberly.knudson@kirkland.com](mailto:kimberly.knudson@kirkland.com); [lmcdonald@aclu.org](mailto:lmcdonald@aclu.org); [phair@advancementproject.org](mailto:phair@advancementproject.org); Fisher, Spencer (CRT); [tyannucci@kirkland.com](mailto:tyannucci@kirkland.com); [winn.allen@kirkland.com](mailto:winn.allen@kirkland.com); O'Connor, Bridget K.; Russ, John (CRT); [JDevaney@perkinscoie.com](mailto:JDevaney@perkinscoie.com); [melias@perkinscoie.com](mailto:melias@perkinscoie.com); [efrost@perkinscoie.com](mailto:efrost@perkinscoie.com); Meza, Catherine (CRT); Ryan, Elizabeth (CRT)  
**Subject:** NC HB 589 - Meet and Confer Follow Up

Dear Alec, Amy, Tom, and Butch:

Thank you for taking the time to talk with us yesterday, February 6, 2014, about your responses to the United States' first set of requests for production. I write to memorialize our conversation and follow up on a few of the issues we discussed.

As a preliminary matter, we note that the State represented during the call that it would begin to produce non-privileged, responsive hard-copy documents by today, with the remaining hard-copy documents to follow in the next two weeks. The State also

represented that it expected production of email discovery to begin during the last week of February, and production of other electronic documents to be completed by the end of this month.

Regarding the State's responses, first, many of Defendants' written responses to the United States' requests for production state specific objections and either (1) provide no further response (RFPs 27-30); (2) state that "Defendants will make relevant state databases available for inspection and copying" (RFPs 2, 3, 4, 9, 10, 12); or (3) state that "Defendants refer Plaintiff to their Initial Disclosures" (RFPs 5-8, 11-19). As we discussed during the call, it is our view that in many instances, these responses are not fully or adequately responsive to the United States' document requests. Although the written responses do not indicate that Defendants intend to supplement these responses in any way, during yesterday's call, you stated that for each RFP, to the extent non-privileged, responsive documents exist that do not fall within the scope of Defendants' "time-frame objection" (i.e., relating to post-enactment implementation and administration of HB 589), Defendants will produce such documents. You also stated that notwithstanding your "time-frame objection," Defendants have not imposed a post-enactment cut-off date on document collection and are searching for and collecting documents created after August 12, 2013, up to the present.

Second, we understand that you are looking into our question regarding materials from the legislative record for HB 589 that have not yet been produced (we discussed this in the context of RFP 8, which requests the "complete legislative record relating to HB 589 . . ."). For example, on page 142 of the transcript of the July 24, 2013 Senate floor debate (SBE00002327), Senator Bryant moves to have the contents of documents submitted during the floor debate included in the Senate Journal. She appears to have made the same motion at the conclusion of the July 25, 2013 Senate floor debate. See SBE00002183-84. Defendants' Initial Disclosures do not contain these materials. We offer this simply as an example to show that the Initial Disclosures do not appear to contain the complete legislative record for HB 589. We look forward to hearing more from you on this topic.

Third, with respect to RFP 30, which seeks information relating to specific election-related bills considered by the General Assembly in recent years, we understand that you intend to produce some non-privileged, responsive documents. We note that there is a typo in RFP 30, subparagraph (d); we did not intend to request documents relating to Senate Bill 386 from the 2001-2002 Legislative Session. I apologize for any confusion this error may have caused. We believe the remaining eight bills listed in RFP 30 are relevant, and that the request is sufficiently targeted that complying with it will not be overly burdensome. You also suggested that documents regarding legislative history are publicly available and that we can look to the General Assembly website for documents responsive to RFP 30. As you know, however, the General Assembly website does not provide access to complete legislative records. For example, written statements and amendments presented during House and Senate committee hearings on HB 589 are not available on the General Assembly website but were produced as part of Defendants' Initial Disclosures. The records from the Senate floor debates noted above are also unavailable on the website. In addition, our document request encompasses internal documents and communications that would not necessarily be part of the public files relating to these bills. We look forward to receiving non-privileged, responsive documents relating to these bills.

Finally, as you know, legislative privilege, where it applies, is personal to and must be asserted by each legislator. See *Alexander v. Holden*, 66 F.3d 62, 68 n.4 (1995). We



therefore continue to request a list of state legislators who have asserted legislative privilege in this matter.

As we noted during the call, the specific RFPs we discussed represent examples of responses that we believe were not complete or not adequate, and we look forward to receiving non-privileged documents that are responsive to our requests in the next few weeks. We also continue to disagree with the State on the scope of legislative privilege and the State's position regarding post-enactment documents, the subjects of the upcoming hearing on February 21.

Thank you again for your time yesterday.

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United States Department of Justice  
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