

**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.)

**JOINT SUBMISSION RE
DEFENDANTS’ PRODUCTION OF
MATERIALS**

Case No.: 1:13-CV-658

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

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

JOINT SUBMISSION RE DEFENDANTS' PRODUCTION OF MATERIALS

1. Hard Copy Materials

(a) Office of the Governor and Department of Transportation

(i) Defendants will produce all responsive, non-privileged hard copy materials from the Office of the Governor and the Department of Transportation by 10 March 2014.

(ii) Defendants will prepare by [*Defendants propose 18/ Plaintiffs propose 11*] March 2014 a privilege log, consistent with the requirements of ¶¶ 31–33A of the Revised Consent Order Regarding Discovery of Documents and Electronically Stored Information entered 17 January 2014 (“Revised Consent Order”), for all responsive hard copy materials for which a privilege is asserted and a privilege log is required.

(b) State Board of Elections

(i) Defendants will complete the production of all responsive, non-privileged hard copy materials from the State Board of Elections by 17 March 2014.

(ii) Defendants will prepare by [*Defendants propose 24/ Plaintiffs propose 11*] March 2014 a privilege log, consistent with the requirements of ¶¶ 31–33A of the Revised Consent Order, for all responsive hard copy materials for which a privilege is asserted and a privilege log is required.

2. Emails and Other Electronic Records

(a) Office of the Governor and Department of Transportation

(i) Defendants will review all electronic records collected from the Office of the Governor and from the Department of Transportation, and will begin producing all responsive, non-privileged, emails and other electronic records by 10 March 2014 with such production to be complete by 17 March 2014.

(ii) Defendants will prepare by [*Defendants propose 24/ Plaintiffs propose 11*] March 2014 a privilege log, consistent with the requirements of ¶¶ 31–33A of the Revised Consent Order, for all responsive emails and other electronic records for which a privilege is asserted and a privilege log is required.

(b) State Board of Elections

(i) Defendants will, consistent with the provisions of ¶¶ 34–38 of the Revised Consent Order and the Protective Order entered 3 January 2014, and without waiving any privilege or immunity, including but not limited to attorney-client privilege, work product protection, legislative privilege or legislative immunity or relevancy objections, provide Plaintiffs’ counsel by 28 February 2014 with all emails and other electronic records collected from the State Board of Elections pursuant to the search terms agreed upon by the parties and not encompassed within ¶¶ II(b)(ii) and (iii) below for Plaintiffs’ review (hereinafter, “Defendants’ Initial SBOE Review Set”).

(1) Such review shall be for attorneys’ eyes only, and reviewing attorneys may not share either the emails or other electronic records reviewed or the contents of emails or other electronic records reviewed in the Defendants’ Initial SBOE Review Set with any Plaintiff or with anyone else other than counsel for Plaintiffs.

(2) Plaintiffs’ counsel will identify for Defendants and for production all emails and other electronic records from the Defendants’ Initial SBOE Review Set they believe to be responsive to their discovery requests, including those that they may intend to use as evidence at trial, in any preliminary hearing, in a deposition, or in any other way. Upon notification of Plaintiffs’ identification of responsive materials, the first of which will occur no earlier than 7 March 2014 Defendants shall have five business days to identify any of those emails or other electronic records that they may believe are not responsive or protected by the attorney-client privilege, the work product doctrine or legislative privilege or immunity (subject to the Court’s ruling on that issue). If Plaintiffs identify more than [*Defendants propose 2,500/ Plaintiffs propose 5,000*] emails or other electronic records, at any one time, Defendants will be afforded one extra day for every 1,000 documents in excess of the [*Defendants propose 2,500/ Plaintiffs propose 5,000*] to make the identification described above. In the event Defendants identify such materials as non-responsive or privileged, Plaintiffs shall designate such documents to which they agree are either non-responsive or privileged in the database and exclude them from the production set. For documents over which Defendants’ designations of responsiveness or privilege are disputed, the parties shall hold a meet and confer to come to a resolution over such documents. All other documents identified by Plaintiffs as responsive shall be produced for use in the litigation, according to the terms of the Protective Order.

(3) For all documents identified by Defendants as privileged from the Defendants’ Initial SBOE Review Set and for which the assertion of privilege is not disputed by Plaintiffs, Defendants shall prepare within 7 calendar days from the date they are so designated a privilege log, to the extent a privilege log is required, consistent with the requirements of ¶¶ 31–33A of the Revised Consent Order.

(4) Plaintiffs' counsel will be and are prohibited from disclosing in any way to any person, including Plaintiffs, the contents of any emails or other electronic record not identified to Defendants and reviewed by Defendants and released by Defendants as responsive and not privileged. For any email or other electronic record for which a privilege or protection is asserted, Plaintiffs' counsel will be and are prohibited from disclosing in any way to any person, including Plaintiffs, the contents of any such email or other electronic record unless and until the asserted privilege has been withdrawn or the Court has overruled the assertion of the privilege.

(5) All electronic records deemed not responsive by Plaintiffs should be destroyed within 14 days of the completion of the Plaintiffs' review of Defendants' Initial SBOE Review Set. Plaintiffs have 14 calendar days after the completion of Plaintiffs' review of Defendants' Initial SBOE Review Set to certify to Defendants that all such documents were destroyed in accordance with the terms of this Agreement.

(ii) Communications With Attorneys: Defendants will review all electronic records collected from the Defendants' Initial SBOE Review Set that were sent by or to, whether as primary recipient or "cc" recipient, counsel assisting with the litigation and will produce all responsive, non-privileged, electronic records by 24 March 2014. Defendants will also prepare by [Defendants propose 31/ Plaintiffs propose 18] March 2014 a privilege log, consistent with the requirements of ¶¶ 31–33A of the Revised Consent Order, for all responsive emails or other electronic records for which a privilege is asserted and a privilege log is required.

(iii) Communications With Legislators: The parties have been unable to agree on procedures for review of electronic records collected from the State Board of Elections that were sent by or to, whether as primary recipient or "cc" recipient, a member of the North Carolina General Assembly or any staff for a member of the North Carolina General Assembly.

Plaintiffs' Proposal: Plaintiffs propose that all such records be included as part of the Defendants' Initial SBOE Review Set.

Defendants' Proposal: Defendants propose that all such records be excluded from the Initial SBOE Review Set and that Defendants review such records and hold all responsive, non-privileged electronic records for production, subject to the Court's ruling on Defendants' Motion to Quash and Plaintiff League of Women Voters' Motion to Compel. Defendants will also prepare a privilege log, if required by the Court, consistent with the requirements of ¶¶ 31–33A of the Revised Consent Order, for all responsive emails or other electronic records required to be produced and for which a privilege is asserted and a privilege log is required.

3. **Interim Updated Productions**

(a) Defendants will conduct one more email search of the SBOE custodians' emails, using the same search terms, with a start date that was the last date in the Defendants' Initial SBOE Review Set and ending on April 1, 2014 ("Defendants' First Supplemental SBOE Review Set"). Defendants will make Defendants' First Supplemental SBOE Review Set available to Plaintiffs to review for responsiveness in the same manner as they did for Defendants' Initial SBOE Review Set.

(b) Defendants will also continue to collect and produce the following specific categories of SBOE hard copy and/or electronic documents on a rolling basis, every three weeks starting Friday, March 7, 2014 through May 2, 2014:

(i) SBOE Meeting Agendas and Minutes

(ii) County BOE early voting aggregate hour waiver applications

(iii) Any materials upon which the SBOE considers or relies upon in granting/denying early voting aggregate hour waiver applications

(iv) Any and all numbered memos sent from the SBOE to CBOEs

(v) Any educational materials relating to any challenged provision in HB 589 that are produced by the State Board of Elections.

4. **Resolution of Discovery Disputes**

(a) The parties shall raise any dispute as to the administration/implementation of the procedures described above, or otherwise as to the conduct of discovery in the first instance amongst themselves (consistent with the Local Rules of this Court). Counsel for either party shall respond to any discovery-related question or request posed by another party within 24 hours, even if that response is only to acknowledge the question or request and to advise that a substantive response requires an inquiry to a specific entity or individual and that entity or individual requires an additional 24 hours to respond.

(b) In the event that parties are unable to resolve any disputes regarding documents withheld on the basis of privilege, the parties shall participate in a meet-and-confer discussion to be scheduled within two business days of the identification of the dispute as to the document(s), and then any remaining issues as to such documents will be raised with the Court on a weekly basis for resolution by *in camera* review, subject to the case management procedures of this Court and the Court's Supplemental Protective Order entered on January 3, 2014.

Dated: **February 26, 2014**

Respectfully submitted,

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Dated: **February 26, 2014**

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By: /s/

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Dated: **February 26, 2014**

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Dated: **February 26, 2014**

Respectfully submitted,

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Dated: **February 26, 2014**

Respectfully submitted,

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Dated: **February 26, 2014**

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