

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

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, et al.,

Plaintiffs,

v.

PATRICK LLOYD MCCRORY, in his
official capacity as the Governor of North
Carolina, et al.,

Defendants.

**JOINT STATUS REPORT
REGARDING DEFENDANTS'
AND THE STATE
LEGISLATORS' DOCUMENT
PRODUCTION**

Civil Action No. 1:13-CV-658

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et
al.,

Defendants.

Civil Action No. 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA, *et*
al.,

Defendants.

Civil Action No. 13-cv-861

Pursuant to this Court's orders of March 27, 2014, and May 15, 2014, (ECF Nos. 79 & 93, 13-cv-861), the parties submit this joint status report regarding Defendants' and State Legislators'¹ document production.

Following a telephone conference on May 21, 2014, the parties reached agreement regarding the following:

1. By May 30, 2014, Defendants will produce all documents and information in the custody of any state agency, including the State Board of Elections ("SBOE"), the North Carolina Department of Transportation, and the Office of the Governor, reflecting communications with any state Legislator or legislative staff member (including personal office staff, committee staff, and other General Assembly staff) as indicated below:
 - a. documents collected from the SBOE, which Plaintiffs have reviewed and determined are responsive and Defendants have withheld from production based on an assertion of legislative privilege; and
 - b. documents collected from the Department of Transportation and the Office of the Governor that were withheld based on an assertion of legislative privilege.
2. By June 6, 2014, Defendants will produce all other documents and information in the category referenced in Paragraph 1, which Defendants collected and withheld

¹ The 13 legislators on whom subpoenas were served are Representative James Boles, Jr., Representative David Lewis, Representative Tim Moore, Representative Tom Murry, Representative Larry Pittman, Representative Ruth Samuelson, Representative Thom Tillis, Representative Harry Warren, Senator Tom Apodaca, Senator Phil Berger, Senator Thom Goolsby, Senator Ralph Hise, and Senator Bob Rucho.

from production based on an assertion of legislative privilege. This includes (but is not limited to) documents collected from the SBOE which Defendants excluded from review by Plaintiffs pursuant to paragraphs 2(b)(ii) or 2(b)(iii) of the Court's March 3, 2014 discovery order, ECF Doc. 74, 13-cv-861, at p. 9.

3. Defendants maintain that with respect to the documents the agencies will produce, Defendants are not objecting to the agencies' production of these documents and are otherwise not waiving their arguments as to any category of privilege as to the communications therein, including but not limited to legislative immunity or privilege, and are not waiving any individual legislator's right to legislative immunity or conceding that any individual legislator has waived any such legislative immunity through this production. Defendants do not intend to seek a return of these documents pursuant to the clawback provision in the Revised Consent Order Regarding Discovery of Documents and Electronically Stored Information ("ESI Order"), ECF No. 42, 13-cv-861 (Jan. 17, 2014).
4. In an effort to narrow the scope of the dispute before this Court, the Plaintiffs agree that they will not at this time seek production of the following categories of communications, and that such communications shall be exempt from the privilege log requirement of Rule 26(b)(5)(a) of the Federal Rules of Civil Procedure, and Paragraph 31 of the ESI Order:
 - a. communications solely between the State Legislators and their attorneys that were created after August 12, 2013, in connection with this litigation;

- b. communications solely between a State Legislator and his or her personal legislative aide. General Assembly staff and/or Committee staff are not included within the scope of this exemption.
5. The parties were unable to agree on the remaining categories of documents that are in the custody of the State Legislators and which Defendants and the State Legislators have withheld on the basis of legislative privilege or other privileges. Further, Defendants and State Legislators do not agree that they must produce a privilege log for all the remaining categories of responsive documents that they contend are subject to legislative privilege, attorney-client, or any other relevant privilege. The categories of documents about which the parties continue to have a disagreement include, for example, (a) legislator to third-party communications (such as constituents, lobbyists, public interest groups, etc.), (b) legislator to legislator communications, (c) legislator to legislative staff (beside personal aides) communications, and (d) legislator communications with outside counsel prior to the commencement of litigation on August 12, 2013. Plaintiffs' position with respect to these categories is that communications with third parties (category "a") are discoverable and should be produced and that a privilege log should be prepared for the remaining categories (categories "b," "c," and "d"). By asserting that a privilege log should be produced, Plaintiffs do not concede that such documents are privileged and reserve the right to challenge specific privilege log entries.

6. Accordingly, with respect to the remaining disputes regarding Defendants' and State Legislators' production of documents responsive to the State Legislator subpoenas and related requests for production from Plaintiffs, the parties have agreed to the following joint briefing schedule:

- a. Opening briefs for all parties due June 11, 2014;
- b. Response briefs for all parties due June 25, 2014.

We request that the Court approve the proposed briefing schedule.

Dated: May 22, 2014

Respectfully submitted,

By: */s/ Adam Stein*

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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on May 22, 2014, I electronically filed the foregoing **Joint Status Report Regarding Defendants' and the State Legislators' Document Production**, using the CM/ECF system in case numbers 1:13- cv-658, 1:13- cv-660, and 1:13-cv-861, which will send notification of such filing to all counsel of record.

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