

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

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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.

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

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et al.,

Defendants.

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UNITED STATES OF AMERICA,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et al.,

Defendants.

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**PLAINTIFFS' EXPEDITED  
MOTION TO COMPEL  
DEPOSITIONS OF KIM  
WESTBROOK STRACH, CHERIE  
POUCHER, AND CAROLYN  
JUSTICE**

**Case No.: 1:13-CV-658**

**Case No.: 1:13-CV-660**

**Case No.: 1:13-CV-861**

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Plaintiffs hereby respectfully move this Court to compel Defendants to produce declarants Kim Westbrook Strach, Cherie Poucher, and Carolyn Justice for depositions on a date and time certain, but no later than July 3, 2014, to provide Plaintiffs the opportunity to depose these declarants in advance of the preliminary injunction hearing scheduled to begin on July 7, 2014. This motion is simple: Defendants cannot submit declarations of witnesses in opposition to Plaintiffs' Motion for Preliminary Injunction and then not make these declarants available for brief depositions in advance of the scheduled preliminary injunction hearing on July 7, 2014. The Federal Rules, not to mention basic rules of fairness, require the declarants be made available for brief depositions as requested.

### **BACKGROUND**

On Wednesday, June 18, 2014, Defendants filed their opposition to Plaintiffs' Motion for Preliminary Injunction ("Opposition"). *See* Defs.' Opp. [ECF No. 136]. In support of their Opposition, Defendants attached the declarations of several witnesses, including Kim Westbrook Strach, Cherie Poucher, and Carolyn Justice. *See* Attach. Nos. 1, 10, 12 to Defs.' Opp. [ECF Nos. 136, 144]. Shortly thereafter, on Monday, June 23, 2014, Plaintiffs' counsel, after conferring among the Plaintiffs' counsel in the several above-captioned cases, requested deposition dates of three declarants in advance of the June 30, 2014 deadline for Plaintiffs' reply brief. Defendants responded the next day, rejecting Plaintiffs' request to provide dates in advance of the June 30 deadline, or even in advance of the July 7 start date for the preliminary injunction hearing. Plaintiffs

reiterated their request for brief depositions the very same day, but it was rejected yet again. Given the parties' impasse and the upcoming preliminary injunction hearing in less than two weeks, Plaintiffs submit the instant motion to compel and seek the Court's expedited intervention.

### **ARGUMENT**

In refusing to schedule depositions for the declarants at issue in advance of Plaintiffs' deadline for filing a reply brief *and* the start of the preliminary injunction hearing, Defendants are contravening the purpose of discovery and perpetuating this unfair process in the upcoming hearing on their Motion for Preliminary Injunction. *See Kinetic Concepts, Inc. v. Convatec Inc.*, 268 F.R.D. 226, 238 (M.D.N.C. 2010) ("The purpose of discovery is to provide a mechanism for making relevant information available to litigants.") (internal quotation marks and citation omitted). Defendants' refusal to provide these witnesses for deposition will deprive Plaintiffs of relevant discovery in advance of the preliminary injunction hearing and unfairly prejudice their ability to adequately prepare for the hearing. Even further, Defendants represented that they do not intend to present these witnesses during the preliminary injunction hearing. Therefore, if Defendants' position is permitted to stand, Plaintiffs will not be able to examine these declarants about their testimony. In our system, that is not the way evidence is presented and tested.

While Defendants claim that providing these witnesses for depositions in advance of the preliminary injunction hearing "is unreasonable and unduly burdensome," *see* Ex.

A (6/24/14 Email from A. Peters to D. Donovan), this is not the case. Defendants are still deposing witnesses who submitted declarations in May in support of the preliminary injunction—including sitting North Carolina legislators, who made themselves available despite their tight legislative schedules. Moreover, Plaintiffs have represented that depositions will be brief; Plaintiffs need no more than two to three hours with each witness to explore the topics covered in their declarations. This amounts to six to nine hours for all three witnesses, an amount of time that would require no more than one day with all three witnesses. This is not unduly burdensome. Notably, another third-party declarant who provided a very brief declaration agreed to a deposition to take place next Tuesday, July 1, 2014. *See* Attach 2 to Defs.’ Opp. [ECF No. 136]. Therefore, Defendants’ argument that the declarants cannot be made available does not stand up.

Defendants do not dispute that Plaintiffs have never had the opportunity to depose Ms. Poucher or Ms. Justice, but claim that Plaintiffs have had the opportunity to depose Ms. Strach. But this misstates reality. While Plaintiffs took a 30(b)(6) deposition of the State Board of Elections earlier in this case, with Ms. Strach as the organizational designee on several of the topics, Plaintiffs have *never* had the opportunity to depose Ms. Strach in her individual capacity. The distinction is important, particularly because the declaration Ms. Strach provided in support of Defendants’ Opposition is written in her individual capacity. Not only have Plaintiffs never had the chance to ask Ms. Strach questions related to her personal knowledge, they have surely never had the opportunity to explore her knowledge and information as it pertains to the declaration she provided in

this case, much of which includes new information not previously made available to Plaintiffs.

In short, Defendants cannot present witness declarations in opposition to Plaintiffs' Motion for Preliminary Injunction and then not make those witnesses available for deposition in advance of the hearing on that motion. Plaintiffs are requesting only what is fair and central to judicial process: that they have the opportunity to conduct brief depositions of declarants in advance of the preliminary injunction hearing—in which the rights of countless North Carolina voters hang in the balance—and prepare their case as efficiently as possible.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court order Defendants to produce Kim Westbrook Strach, Cherie Poucher, and Carolyn Justice for depositions at a date and time certain, but no later than July 3, 2014.

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 37.1**

In accordance with Middle District of North Carolina Local Rule 37.1, Plaintiffs certify that the parties were not able to reach agreement on these matters after personal consultation and diligent attempts to resolve their differences. The parties have discussed these issues via email, including emails on June 23 and 24, 2014. Plaintiffs' have attempted, in good faith, to resolve the issues raised by this motion; however, in light of the approaching deadline for filing Plaintiffs' Reply in Support of Motion for Preliminary Injunction and looming preliminary injunction hearing, Plaintiffs cannot delay any further in filing this motion and are forced to seek the Court's assistance in resolving this disagreement.

Dated: June 25, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Daniel T. Donovan, hereby certify that, on June 25, 2014, I filed a copy of the foregoing Plaintiffs' Expedited Motion to Compel the Depositions Kim Westbrook Strach, Cherie Poucher, and Carolyn Justice using the CM/ECF system, which on the same date sent notification of the filing to the following:

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