

**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.)

Case No.: 1:13-CV-658

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.)

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 L.
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

LEAGUE OF WOMEN VOTERS PLAINTIFFS' MOTION TO EXPEDITE BRIEFING

Concurrently with this motion, the League of Women Voters (“LWV”) Plaintiffs have filed a Motion to Compel production of documents from Defendants. As that motion explains, Defendants have not produced *any* document in response to the LWV first request for production served on December 20, 2013. Instead, on January 22, 2014, Defendants provided a written response to Plaintiffs’ requests, lodging a common generalized objection to virtually all of Plaintiffs’ requests, that the information requested is “subject to legislative immunity or confidentiality and protected by the legislative, executive, attorney-client and/or work product privilege,” and referring Plaintiffs to Defendants’ initial disclosures. Defendants have produced no responsive documents and no privilege log.

The documents Plaintiffs seek are related to the enactment of HB 589 and are relevant, discoverable, and highly probative of legislative intent. Plaintiffs have met and conferred with Defendants to facilitate the production of documents, but have met with Defendants’ blanket opposition to production of documents created by or in the custody of legislators. Despite the relevance of the requested documents and Plaintiffs’ clear need for these documents, counsel for North Carolina has asserted that Defendants are immune from production of all documents in the custody of legislators and are exempt from producing any documents in a third party’s custody created by a legislator.

Defendants made identical arguments of legislative immunity and privilege in their pending Motion to Quash NAACP Plaintiffs’ subpoenas to legislators. *See* Dkt. No. 58 at 5-11. Accordingly, Plaintiffs have filed a Motion to Compel, asking the Court for various forms of relief, including an order requiring Defendants to produce responsive documents by a date certain, and an order to produce a privilege log identifying all responsive documents for which Defendants claim a

privilege and the specific grounds claim for such privilege, as Defendants should have provided with their initial response.

Plaintiffs require an expedited resolution of their Motion to Compel so that they can obtain the documents necessary to proceed with further discovery activities and to prepare and file motions for preliminary injunctive relief before the May 5, 2014 deadline set by the Court. Moreover, in light of the Court's hearing scheduled for February 21, 2014 to determine the scope of any legislative immunity and privilege with regard to Defendants' Motion to Quash, expedited consideration of this motion concurrently with the pending Motion to Quash would conserve judicial time and resources. Plaintiffs therefore propose the following scheduling for resolving this Motion to Compel, which would allow it to be heard concurrently with Defendants' pending Motion to Quash:

- February 18, 2014 — Defendants file their response to Plaintiffs' Motion to Compel (this is the same date on which Defendants must file a reply in support of their Motion to Quash).
- February 20, 2014 — Plaintiffs file a reply brief in support of their Motion to Compel.
- February 21, 2014 — This Court hears argument on Plaintiffs' Motion to Compel at the same time as the same time as arguments on Defendants' Motion to Quash.

This schedule will enable the parties to resolve the pending Motion to Compel within the next two weeks, so that the parties can obtain clarity on Defendants' duty to produce documents and the dates on which those productions will be made. Because the Defendants have already had nearly two months to produce documents, the parties have engaged in lengthy discussions regarding discovery, and Defendants have taken an identical position and briefed similar issues in their Motion to Quash, no prejudice would result, particularly in light of Defendants' consistent pattern of delays and refusals to produce documents.

Dated: February 7, 2014

Respectfully submitted,

By: /s/ Julie A. Ebenstein

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2014, I served **Plaintiffs' Motion to Expedite Briefing** 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:

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