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, MARY PERRY, and MARIA TERESA UNGER PALMER 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.	**PLAINTIFFS' OPPOSITION TO MOTION TO QUASH SUBPOENAS TO STATE LEGISLATORS** **Case No.: 1:13-CV-658**

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**

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**

INTRODUCTION

The motion to quash should be denied. Nothing in law or logic allows legislators to withhold as privileged ***all*** documents in their possession, regardless of who those documents were received from or disclosed to. That is all the more true in a voting rights case, where the intent of the legislature and the evidence that was before that body at the time the challenged statute was enacted are core issues to be resolved. In short, the motion to quash unjustifiably seeks wholesale protection for a broad swath of documents that are at the very heart of this case—something that neither Fourth Circuit law nor basic notions of fairness permit.

In 2013, certain members of the North Carolina legislature proposed and voted in favor of H.B. 589, a sweeping set of election reforms that Plaintiffs allege imposes unjustified and discriminatory electoral burdens in violation of the Voting Rights Act and the United States Constitution. Both before and after H.B. 589 was enacted, numerous members of the state legislature—including many of those legislators bringing the current motion—discussed H.B. 589 publicly and advocated for its passage through media outlets and otherwise. On August 12, 2013, the NAACP Plaintiffs filed this lawsuit challenging certain provisions of H.B. 589 as violating the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the U.S. Constitution. Several of those claims allege that H.B. 589 was enacted with the intent of suppressing the voting rights of African-American and Latino citizens, something that both the Voting Rights Act and the Constitution prohibit.

Because the motives, purposes, and intent of the legislature are directly relevant to the claims in this case, the NAACP Plaintiffs served document subpoenas on 13 members of the North Carolina legislature who voted in favor of H.B. 589. Each of these legislators played an important role in the drafting and passage of H.B. 589, and thus it is undisputed that these legislators possess information that is highly relevant to Plaintiffs' claims. Nonetheless, all 13 legislators have moved to quash the subpoenas in total citing doctrines of legislative immunity and privilege.

Significantly, the movant legislators make these privilege arguments without their counsel having actually collected and reviewed any documents in the legislators' possession. They make these arguments without having created a privilege log identifying the categories of documents that are being withheld. And they make these arguments without ever addressing the fact that this is a voting rights case, in which the knowledge and motivation of legislators' is highly relevant and the rationale to support legislative privilege are at their nadir.

With that backdrop, it is easy to see why the current motion to quash is ill-founded. Legislators are not wholly immune from discovery under the doctrine of legislative privilege as movants suggest. Rather, courts have emphasized—especially in voting rights cases—that the privilege is a limited one, informed by a balancing test. Movants must show that the traditional policy rationales supporting the privilege outweigh the strong federal interest in enforcement of civil rights statutes and bedrock constitutional protections. Undertaking that balancing test here cuts strongly in favor of

production.

Moreover, to the extent the doctrine of legislative privilege applies at all in this case, movants bear the burden of demonstrating its applicability with respect to the specific documents held by the legislators. They have not done so. Rather, movants argue, without any detail, that ***all*** materials in their possession, custody, or control are barred from discovery. In other words, movants seek to withhold ***every*** document responsive to Plaintiffs' requests, including for example, documents and communications exchanged with third parties that are clearly not protected by even the broadest view of legislative privilege.

Movants further overreach by asking the Court not only to support them in their overbroad application of the legislative privilege in the first place, ***but also*** to waive the privilege log requirement set forth in the Federal Rules as to these documents. This request is unreasonable and unjustified. A privilege log is the only way for Plaintiffs to assess whether movants have asserted a valid claim of legislative privilege. Moreover, the burden of providing a privilege log pales in comparison to the burden faced by Plaintiffs if they are deprived of highly relevant documents in a case that seeks to resolve the deprivation of the fundamental right to vote, particularly if that deprivation is allowed to occur on a blanket basis and with no accountability through a routine privilege log. Thus, at a minimum, movants should have to produce evidence of the privilege they are asserting through a privilege log.

Movants' wholesale rebuff of legitimate, relevant discovery requests stands to

thwart the discovery process and frustrate the court's ability to enforce the provisions of the Voting Rights Act and U.S. Constitution. Plaintiffs therefore respectfully request that the Court deny movants' Motion to Quash and order movants (1) to produce all documents responsive to Plaintiffs' discovery requests and (2) to produce a privilege log that describes with specificity the privilege claimed and the basis for the privilege.

BACKGROUND

On August 12, 2013, Plaintiffs filed suit against Governor Patrick McCrory and the North Carolina State Board of Elections, challenging various provisions of H.B. 589 as violating the Voting Rights Act and the United States Constitution. Enacted into law as Session Law 2013-381 ("SL 2013-381"), H.B. 589 imposes sweeping changes on North Carolina's election laws that are designed to deny or abridge the right to vote of countless North Carolina voters on the basis of race or ethnicity. These sweeping changes include, in pertinent part, eliminating same-day registration, prohibiting the counting of out-of-precinct ballots, requiring photo identification to vote, reducing the length of early voting, increasing the number of poll observers at precincts, and eliminating pre-registration of 16 and 17 year-olds. Taken individually and together, these provisions will curtail the right to vote, violating the Fourteenth and Fifteenth Amendments of the U.S. Constitution and Section 2 of the Voting Rights Act.

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiffs served certain state legislators with subpoenas for documents. Each of these legislators played an active role in the development or passage of H.B. 589. For example, Representatives

Harry Warren, Tom Murry, Tim Moore, and Ruth Samuelson were the primary sponsors of H.B. 589. Plaintiffs' subpoenas to each legislator were identical in substance and sought information related to Plaintiffs' claims.[1] Plaintiffs' requests sought information bearing on the rationale, development, and implementation of the provisions in H.B. 589, matters directly relevant to Plaintiffs' claims. For example Plaintiffs requested, among other things, documents related to procedural irregularities in enacting H.B. 589 (Pls.' Request No. 7), the number of voters who currently lack photo identification (Pls.' Request No. 10), the estimated cost to voters and the State to procure acceptable photo identification to vote (Pls.' Request No. 11), the effect of H.B. 589 on voter turnout and waiting times at the polls (Pls.' Request No. 13), and the cost of administering the provisions of H.B. 589 (Pls.' Request No. 15).

On January 20, 2014, the day Plaintiffs' responses were due, movants' counsel filed a motion to quash on behalf of every legislator served by Plaintiffs. This blanket motion seeks to quash Plaintiffs' subpoenas in their entirety, claiming that legislative immunity "forbids plaintiffs from seeking *any* production at all from legislative movants." *See* 1/20/14 Mem. in Supp. of Mot. to Quash ("Mot. to Quash") at 7. Counsel for Defendants asserted the same position during the parties' meet and confer teleconference on January 30, 2014. During that meeting (which was related to Defendants' discovery objections, not the legislators' motion to quash), Defendants

[1] For the Court's convenience, a copy of the subpoena and associated document requests served on Rep. Harry Warren are attached hereto as Exhibit A as a representative copy of the requests that were served on each legislator.

asserted that they had no intention of producing any document involving a legislator, regardless of the document's origin.

ARGUMENT

I. LEGISLATIVE PRIVILEGE DOES NOT APPLY TO EVERY DOCUMENT PLAINTIFFS REQUESTED.

In their motion, the movants argue that "***[t]here is no question***" that Plaintiffs' document requests are barred by legislative privilege. [2] 1/20/14 Mot. to Quash at 5 (emphasis added). That is not true. Even under an expansive reading of legislative privilege, it cannot be said that legislative privilege applies to ***every*** document Plaintiffs requested, many of which include communications with third parties. Taking movants' position to its logical end, this would mean that legislative documents or communications with ***any*** third party, no matter the party's relationship to the functions of the General Assembly, are privileged because they involved a legislator.

This position is untenable and unsupported by the law. Legislative privilege does

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[2] Though movants frame their argument against disclosure in terms of "legislative immunity," Plaintiffs address their arguments in terms "legislative privilege" insofar as legislative immunity and legislative privilege are often treated as distinct concepts: the former dealing with immunity from civil liability, and the latter dealing with the obligations to produce otherwise discoverable information. *See Favors v. Cuomo*, 285 F.R.D.187, 209 (E.D.N.Y. 2012) ("[l]egislative privilege is related to, but distinct from, the concept of legislative immunity"); *see also Hobart v. City of Stafford*, 784 F. Supp. 2d 732, 763 (S.D. Tex. 2011) (explaining that under federal common law legislative immunity and legislative privilege are not treated the same). This is consistent with the view set forth by the Fourth Circuit in *EEOC v. Wash. Suburban Sanitary Comm'n*: "Legislative privilege against compulsory evidentiary process exists to safeguard this legislative immunity and to further encourage the republican values it promotes." 631 F.3d 174, 181 (4th Cir. 2011). As argued below, legislative immunity does not necessarily mean that all discovery is barred from discovery.

not apply to any and all documents involving a legislator. At best, the privilege "only applies to activities ***integral*** to the legislative process." *Doe v. Pittsylvania*, 842 F. Supp. 2d 906, 916 (W.D. Va. 2012) (emphasis added); *see also EEOC v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 184 (4th Cir. 2011) (ordering compliance with modified subpoena because it did not involve "integral steps" of the legislative process) (internal quotations omitted). Indeed, in *Gravel v. United States*—a case on which movants rely—the Supreme Court made clear that "[l]egislative acts are not all-encompassing," explaining that:

> That Senators generally perform certain acts in their official capacity as Senators does not necessarily make all such acts legislative in nature. Members of Congress are constantly in touch with the Executive Branch of the Government and with administrative agencies—they may cajole, and exhort with respect to the administration of a federal statute—but such conduct, though generally done, is not protected legislative activity.

408 U.S. 606, 625 (1972).

The Court's explanation in *Gravel* succinctly describes the problem here. Movants claim, in essence, that any activity is protected legislative activity by virtue of involving a legislator, but that goes far beyond the purpose and breadth of the privilege. Documents reflecting communications with constituents, state agencies, interest groups, third parties or other kinds of public documents, for example, are not protected. On this basis alone, movants should be ordered to respond to many, if not all, of Plaintiffs' document requests. Indeed, Plaintiffs' Request for Production Nos. 2, 4, 5, 6, and 9 specifically request documents and communications with third parties related to H.B. 589, including documents and communications exchanged with constituents, state

agencies, the Governor's office, lobbyists, and public interest groups.[3] Those materials cannot possibly be protected by any conception of the doctrine of legislative privilege.

II. MOVANTS SHOULD PRODUCE A PRIVILEGE LOG.

Not only do movants seek to withhold ***all*** documents responsive to the subpoenas issued by Plaintiffs, they also seek to avoid producing a privilege log in this case, which would enable Plaintiffs to understand the documents that were withheld and the basis for the privilege assertion. That is not permitted.

The Federal Rules require a privilege log, and movants have not asserted any basis justifying an exemption to that requirement. Movants provide no authority for the proposition that documents withheld on grounds of legislative privilege should be exempt from the privilege log requirement. Indeed, ***none*** of the handful of cases cited by movants in which a court waived the privilege-log requirement involved claims of legislative privilege. *See Frye v. Dan Ryan Builders, Inc.*, Civil Action No. 3:10-CV-39, 2011 WL 666326, at *7 (N.D.W.V. Feb. 11, 2011) (not requiring privilege log for "file related to this litigation" because documents protected by attorney-client privilege and work product doctrine); *United States v. Bouchard Transp., Inc.*, No. 08-CV-4490, 2010 WL 1529248, at *2 (E.D.N.Y. April 14, 2010) (discussing documents prepared in anticipation of litigation); *Capitol Records, Inc. v. MP3Tunes, LLC*, 261 F.R.D. 44, 51 (not requiring defendant to log "any attorney-client communications or work product

[3] Insofar as Plaintiffs' other document requests specifically request information that was "*received* or created by" legislators, movants should also have to produce documents that were generated by or exchanged with third parties.

documents"); *Ryan Inv. Corp. v. Pedregal de Cabo San Luca*, No. C 06-3219, 2009 WL 5114077, at *3 (N.D. Cal. Dec. 18, 2009) (finding that attorney-client communications and work product from after litigationon commenced do not have to be logged).

To the contrary, various federal courts have required a privilege log for claims of legislative privilege:

- *Favors*, 285 F.R.D. at 223-24 (ordering defendants to supplement descriptions in privilege log to support claim of legislative privilege);
- *Doe v. Nebraska*, 788 F. Supp. 2d 975, 986-87 (D. Neb. 2011) (ordering production or privilege log for documents withheld on privilege grounds, including legislative privilege, if parties could not reach agreement on discovery);
- *Young v. City and County of Honolulu*, Civ. No. 07-00068, 2008 WL 2676365, at *2 (D. Haw. July 8, 2008) (noting that court ordered production of privilege log for any documents withheld on privilege grounds, including legislative immunity).

As those cases have recognized, requiring the production of a privilege log makes good sense because privilege logs are the *rule*, not the exception, even when those materials are requested by subpoena. Fed. R. Civ. P. 45(e)(2)(A) (requiring description of documents so that opposing party can assess withholding party's claim of privilege).

Importantly, a privilege log is the only way for Plaintiffs to assess what information has been withheld and whether movants have fairly asserted legislative privilege. This is particularly critical here where movants ***and*** Defendants have made clear that they will not produce any documents or communications involving a legislator, regardless of their source. Given the expansive view that movants and Defendants have taken with respect to legislative privilege, requiring production of a privilege log is a

modest requirement compared to what movants are seeking here: to deny Plaintiffs an untold number of documents that, in all likelihood, bear directly on whether H.B. 589 threatens the right to vote on the basis of race or ethnicity. Movants should be required to produce a privilege log for any materials they withhold on grounds of legislative privilege or legislative immunity.

III. MOVANTS GROSSLY OVERSTATE THE SCOPE OF LEGISLATIVE PRIVILEGE.

Against this background, movants' request for this Court to completely quash the subpoena is not yet ripe—and, as explained below, wrong on the law. The movants should be ordered to produce non-privileged documents and produce forthwith a privilege log of documents they maintain are privileged. Plaintiffs can then review the log, meet and confer with movants, and then address any unresolved disputes with the Court (either by motion and/or by an in camera review of the documents).

In addition to not being ripe, movants' request turns on an exaggerated view of the law. Movants maintain that the doctrine of legislative privilege is "broad and absolute." *See* 1/20/14 Mot. to Quash at 7. That is not true. Courts within the Fourth Circuit have ordered the production of documents notwithstanding the application of legislative privilege, fatally undermining movants' claim that the doctrine applies "absolute[ly]" in all cases. *See, e.g.*, *Small v. Hunt*, 152 F.R.D. 509, 513 (E.D.N.C. 1994).[4] For example,

[4] Movants argue that *Small v. Hunt* is not persuasive because it does not involve an attempt to seek discovery of legislative material and pre-dates the controlling authority of *EEOC v. Wash. Suburban Sanitary Comm'n*. 1/20/14 Mot. to Quash at 9. If anything, however, *Small* is consistent with the "controlling authority" of the Fourth Circuit.

in *Small v. Hunt*, the court ordered the production of various documents, including documents related to "the deliberations of the Committee, such as minutes of the meetings and data considered by the Committee during their deliberations." *Id.* Plaintiffs have sought similar materials in their requests. In holding that these materials were not protected by legislative privilege, the court explained that "[t]he primary purpose of legislative immunity is not to protect the confidentiality of legislative communications, nor is it to relieve legislators of the burdens associated with document production." *Id.* (internal quotations omitted).

This view is consistent with that expressed by other district courts that have ordered the production of documents notwithstanding assertions of legislative privilege. This qualified view of legislative privilege is particularly relevant in cases brought under the Voting Rights Act, where courts have recognized that doctrines of legislative privilege must yield to the significant federal statutory and constitutional interests at stake. *See, e.g.*, *Baldus v. Brennan*, 843 F. Supp. 2d 955, 960-61 (E.D. Wis. 2012) (ordering defendants to comply with order to produce documents in case involving claims under Voting Rights Act); *see also United States v. Irvin*, 127 F.R.D. 169, 174 (C.D. Cal.

While neither case involves taking discovery from a legislator, both cases order the production of documents from legislative-type bodies because precluding discovery would not further the policy objectives of legislative privilege. *See Wash. Suburban Sanitary Comm'n*, 631 F.3d at 177, 184 (ordering production of documents from "bi-county governmental body" because "[c]alling the activities that the modified subpoena seeks to investigate here 'integral steps in the legislative process,' would . . . expand legislative privilege beyond its proper bounds.") (internal citation omitted); *compare Small*, 152 F.R.D. at 512, 513 (ordering production of documents from "quasi-legislative" body because "[t]he primary purpose of legislative immunity is not to protect the confidentiality of legislative communications").

1989) (granting plaintiffs' motion to compel production of documents in case involving claims under Voting Rights Act). In these cases, the courts concluded that plaintiffs' need for information in defending potential violations of important constitutional rights trumped the need for legislative privilege. *See Baldus*, 843 F. Supp. 2d at 959 (explaining that "no public good suffers by the denial of privilege in this case," while it "is extremely important to the public, whose political rights stand significantly affected by the efforts of the Legislature"); *see also Irvin*, 127 F.R.D. at 173-74 (holding that "privilege must yield to need for disclosure" because "the federal interest in enforcement of the Voting Rights Act weighs heavily in favor of disclosure"); *cf. League of Women Voters of Fla. v. Fla. House of Representatives*, No. SC13-949, SC13-951, 2013 WL 6570903, *18 (Fla. Dec. 13, 2013) (finding that state legislative privilege must yield in favor of the important government interests in ascertaining legislative intent in voting challenge brought under the State's recent constitutional amendment prohibiting political gerrymandering). This case should be no different.

To be sure, movants take the law of the Fourth Circuit too far. In discussing the scope of legislative privilege, movants describe *EEOC v. Wash. Suburban Sanitary Commission* as the "controlling Fourth Circuit authority." 1/20/14 Mot. to Quash at 9. But the panel in *Washington Suburban Sanitary* ***ultimately ordered the production of documents*** notwithstanding its recognition that legislative privilege could apply in some circumstances. 631 F.3d at 184 (explaining that "[w]hile we agree wholeheartedly with WSSC about the importance of legislative immunity and privilege, we do not believe the

EEOC's modified subpoena threatens them at the present time."). In ordering the production of various documents, the court explained that "[c]alling the activities that the modified subpoena seeks to investigate here 'integral steps in the legislative process,' would . . . expand legislative privilege beyond its proper bounds." *Id.* at 184 (internal citation omitted). The Fourth Circuit's precedent simply cannot support the notion that legislative privilege functions as an absolute bar to discovery.

Movants' reliance on *Schlitz v. Commonwealth of Virginia* is similarly misplaced. In *Schlitz*, the court was not asked to decide whether discovery was allowed, but whether plaintiffs' claims were precluded by the doctrine of legislative immunity. Indeed, *Schlitz* says nothing about the production of documents, or whether defendant must respond to a subpoena. Its application should thus be limited to its specific holding as to the preclusion of the ***claims*** in that case, particularly in light of more recent precedent from the Fourth Circuit suggesting that there is an outer boundary to what is protected by legislative privilege. *See Wash. Suburban Sanitary Comm'n*, 631 F.3d at 184.

Furthermore, movants improperly conflate legislative immunity with legislative privilege. Lawmakers' immunity from suit does not mean that they are exempt from all discovery requests, as they have asserted. While legislative immunity exists to protect lawmkers from civil liability for their legislative actions and informs the rationale for the legislative privilege from production, the two are not the same—and legislative immunity does not imply that legislators are *always* shielded from producing documents or testifying about their legislative acts as the movants suggest. Indeed, the Supreme Court

rejected the notion that immunity from suit always gives rise to an evidentiary privilege. *United States v. Gillock*, 445 U.S. 360, 373 (1980) (finding in the criminal context that "recognition of an evidentiary privilege for state legislators for their legislative acts would impair the legitimate interest of the Federal Government in enforcing its criminal statutes with only speculative benefit to the state legislative process.").

That legislative privilege is not as broad as movants suggest in their motion is underscored by the strong federal interest that courts have recognized in enforcing federal civil rights statutes. *See Pittsylvania*, 842 F. Supp. 2d at 921 ("[T]here is a very strong federal interest in the enforcement of civil rights statutes that provide remedies for violations of the Constitution."); *see also Hobart*, 784 F. Supp. 2d at 765 (similar); *see also Floren v. Whittington*, 217 F.R.D. 389, 391 (S.D.W.Va. 2003) (recognizing "the important federal interests in broad discovery and truth seeking as well as the interest in vindicating important federal substantive policy such as that embodied in section 1983"); *see also Wash. Suburban Sanitary Comm'n*, 631 F.3d at 185 (noting that granting the modified subpoena "advances [the] legislative intent" that Americans be able to "to work without discrimination").

The Supreme Court has acknowledged that in civil rights cases involving fundamental rights under the Constitution, in certain circumstances claims of legislative privilege must yield to discovery. *See Village of Arlington Heights v. Metropolitan Housing Develop. Corp.*, 429 U.S. 252, 268 (1977) (explaining that "[i]n some extraordinary instances the members might be called to the stand at trial to testify

concerning the purpose of official action, although even then such testimony frequently will be barred by privilege.").[5] For this reason, many district courts have taken the view that legislative privilege depends on the outcome of a balancing test that weighs the interests of the individual seeking the information against the individual asserting the privilege. *See, e.g.*, *Ala. Educ. Ass'n v. Bentley*, No. CV-11-S-761-NE, 2013 WL 124306, at*13 (N.D. Ala. Jan. 3, 2013) (explaining that the "legislative privilege is not absolute" and thus courts must "balance the various competing interests" to determine if the legislative privilege applies) (internal quotations omitted); *see also Favors v. Cuomo*, 285 F.R.D. 187, 209 (E.D.N.Y. 2012) (explaining that "the legislative privilege for state lawmakers is, at best, one which is qualified" and depends on a "balance of the interests") (internal quotations omitted); *see also Rodriguez v. Pataki*, 293 F. Supp. 2d 302, 304 (S.D.N.Y. 2003) (affirming magistrate's analysis of legislative privilege, including that it is not absolute and determined by a balancing of interests).

This approach makes sense here. This court should adopt the view shared by "[m]ost decisions in [voting rights] cases involving claims of legislative privilege[, which] have recognized a qualified legislative privilege, and have balanced the parties' competing interests when determining if and to what extent the privilege applies and

[5] Indeed, even North Carolina's statutes concerning the confidentiality of legislative communications provide an exception to the general rule of confidentiality when the interests of justice require it. N.C.G.S. § 120-132(c), which addresses testimony by legislative employees, states: "Subject to G.S. 120-9, G.S. 120-33, and the common law of legislative privilege and legislative immunity, the presiding judge may compel disclosure of information acquired under subsection (a) of this section if in the judge's opinion, ***the disclosure is necessary to a proper administration of justice.***" (Emphasis added).

protects against compelled disclosure." *Favors*, 285 F.R.D. at 213. Indeed, this is precisely the type of case where even if legislative privileges apply, the privilege should yield to the need for discovery. The importance of the information that Plaintiffs seek cannot be overstated. Understanding how and why H.B. 589 was proposed and enacted is critical to Plaintiffs' claim that H.B. 589 was designed to deny or abridge the right to vote on the basis of race. *See, e.g.*, *Florida v. U.S.*, 885 F. Supp. 2d 299, 348 (D.D.C. 2012) (noting that "the historical background of the [jurisdiction's] decision"; "the specific sequence of events leading up to the challenged decision"; and "[d]epartures from the normal procedural sequence" are all relevant factors in determining whether the changes to the state's voting laws were motivated by race) (quoting *Arlington Heights*, 429 U.S. at 267-68). Quashing Plaintiffs' subpoenas in their entirety would run afoul of the boundaries of legislative privilege, and more importantly, undermine the strong federal interest courts have in enforcing civil rights statutes.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny movants' motion to quash.

Dated: February 10, 2014

Respectfully submitted,

By: /s/ *Adam Stein*

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CERTIFICATE OF SERVICE

I, Daniel T. Donovan, hereby certify that on **February 10, 2014**, I served **NAACP Plaintiffs' Opposition to Motion to Quash Subpoenas to State Legislators** 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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