

Pocklington, Amy M.

From: Farr, Thomas A.
Sent: Monday, December 23, 2013 2:16 PM
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Subject: Assistance in Discovery
Categories: Red Category

Dear Counsel

The defendants are writing to seek your assistance and advice on your pending discovery requests.

The discovery requests are massive and entail ongoing requests for voluminous data bases at the State Board of Elections and the NC Department of Transportation. We are moving forward with this project despite the fact that many necessary personnel have been unavailable during both the Thanksgiving Holiday and the Christmas Holiday. However, without agreement on number of custodians or search terms, defendants cannot properly respond to the outstanding requests. We would like to reach an agreement on these issues as soon as possible. We can and will work on collecting all documents while the court is deciding on disputed issues related to privilege.

Given these issues we would propose a phased production, which would serve to expedite the production of documents deemed by the plaintiffs to be of the highest priority. We also would propose a 90 day extension of time to respond to the outstanding discovery requests and subpoenas issued to legislators, DOT, members of the State Board of Elections or other State officials. We will, of course produce responsive, non-privileged documents on a rolling basis as they become available for production, but we will simply be unable to respond to all outstanding requests by the current due dates. This is not an unusual request in cases of this nature. However, we are mindful of the court's scheduling order and plaintiffs need to obtain information relevant to your anticipated preliminary injunction motion.

To that end, it seems to us that voter ID should not be the subject of a preliminary injunction motion because that part of the statute does not become effective until January 1, 2016. If we can reach an agreement that voter ID will not be part of the preliminary injunction motion, we think that will substantially assist defendants in focusing on the production of information that relates to the preliminary injunction.

Thus, it seems to us that your preliminary injunction motion will focus on the reduction in the number of days for no excuse one stop voting, the elimination of same day registration, and the elimination of out of precinct voting.

For the issues related to the reduction of days for one stop voting, the elimination of SDR, and the elimination of out of precinct voting, it seems to us that the most important information needed by the plaintiffs would be the typed legislative record (which we can produce on January 8) and the data base you need from the State Board of Elections. The Department of Transportation data base seemingly relates only to the voter ID issues. We think that SBE data base can be produced sometime in January provided we have some discussions with you and your IT personnel and our IT personnel.

We are also open to specific suggestions for the immediate production of other information similar to the SBE data base and the typed legislative record.

It would also help defendants if plaintiffs could give us their priority of which agency and their custodians is most important to the plaintiffs versus the agency and custodian that is least important. (Governor's office, legislature, SBE, DMV).

Defendants have no intention of delaying the process and want to work with plaintiffs to expedite discovery in any reasonable manner but we also need your help and advice .

Please let us know if you consent or oppose our request for an extension of time, conditioned on our meeting and conferring on the outstanding issues related to custodians and search terms, as well as the proposal for conducting the production in phases according to agreement on priorities.

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