From: Allen, Winn <winn.allen@kirkland.com>
Sent: Thursday, January 16, 2014 5:20 PM
To: Pocklington, Amy M.; ‘thomas.farr@ogletreedeakins.com’;
allison@southerncoalition.org; AnitaEarls@southerncoalition.org; apeters@ncdoj.gov;
‘AStein@tinfulton.com’; bob.stephens@nc.gov; butch@butchbowers.com;
catherine.meza@usdoj.gov; cbrook@acluofnc.org; dale.ho@aclu.org;
david.cooper@usdoj.gov; Donovan, Daniel T.; *dlieberman@advancementproject.org;
gill.beck@usdoj.gov; jebenstein@aclu.org; john.russ@usdoj.gov; Rancour, Kimberly D.;
lmcdonald@aclu.org; spencer.fisher@usdoj.gov; Strach, Phillip J.; Yannucci, Thomas D.;
‘ljoyner@NCCU.EDU’; *phair@advancementproject.org; boconner@kirkland.com; Lange,
Michelle A.; O’Connor, Bridget K.

Subject: RE: Outstanding ESI issues

Amy:

I am writing to address search-term and custodian issues, and to set up a time for a meet-and-confer telephone call on Tuesday.

Thank you for sharing the proposed list of custodians from whom Defendants will search for electronic documents. With regard to Defendants’ proposed list of custodians, Plaintiffs are not in a position at this time to know whether the list you have proposed includes all appropriate custodians. At this point, only Defendants possess that information. In light of that, we believe that Defendants should proceed with collecting and producing documents from the custodians included in your list. Plaintiffs reserve their rights, however, to request that Defendants search for and produce documents from other custodians who are shown through discovery to likely possess relevant information.

With regard to Defendants’ proposed search terms, in light of the need to proceed with discovery as quickly as possible, we believe that Defendants should proceed to search for documents using the current list of search terms, with Defendants’ modifications below. Plaintiffs do not agree with several of Defendants’ comments below, and believe that all of the terms included in our last communications should be searched. Plaintiff thus reserve their objections regarding those terms. But in the interests of receiving Defendants’ document production as soon as possible, those disagreements should not hold up Defendants’ review and production process. Defendants should proceed with reviewing and producing documents, and the parties can resolve their remaining disagreements while that process is proceeding.

Finally, we would like to hold a meet-and-confer telephone call with Defendants at 10:00am on Tuesday, January 21. Please let us know if that time works. During that call, we would like to discuss a number of issues related to the email below and Defendants’ written responses to Plaintiffs’ Requests for Production.

Thanks,

Winn

K. Winn Allen

Kirkland & Ellis LLP
655 Fifteenth St. N.W. | Washington, DC | 20005
Tel: 202-879-5078 | Fax: 202-654-9648
From: Pocklington, Amy M. [mailto:Amy.Pocklington@ogletreedakeins.com]
Sent: Thursday, January 16, 2014 10:13 AM
To: Pocklington, Amy M.; 'thomas.farr@ogletreedakeins.com'; allison@southerncoalition.org;
AnitaEarls@southerncoalition.org; apeters@ncdoj.gov; 'AStein@tinfulton.com'; bob.stephens@nc.gov;
butch@butchowers.com; catheine.meza@usdoj.gov; cbroom@acluofnc.org; dale.ho@aclu.org; david.cooper@usdoj.gov;
Donovan, Daniel T.; *dieberman@advancementproject.org; gill.beck@usdoj.gov; jebenstein@aclu.org;
john.russ@usdoj.gov; Rancour, Kimberly D.; lmcdonald@aclu.org; spencer.fisher@usdoj.gov; Strach, Phillip J.; Yannucci,
Thomas D.; Allen, Winn; 'jjoyner@NCCU.EDU'; *phair@advancementproject.org; boconner@kirkland.com; Lange, Michelle A.
Subject: Outstanding ESI issues

Counsel,

I am attaching a proposed list of potential custodians. As previously discussed, this list is subject to and likely will change. You will note that legislators do not appear on the list. Consistent with Defendants’ position that the legislative privilege shields individual legislators from discovery, Defendants have not identified members of the NC General Assembly as custodians. Defendants have, nevertheless, taken steps to preserve responsive documents in the custody or control of individual legislators.

With regard to the databases at issue and your email dated 1/9/14 where you requested a data dictionary for the SADLS database, we have confirmed that a data dictionary does not exist for that database. We are in the process of reviewing the data and scrabling it for confidential and personally identifying information. To the extent you would like to access the SBE data from the SEIMS database quickly, it is all available on the SBE’s website. We can provide detailed instructions for you on gaining access to the information there.

We also received your revised search terms today. In lieu of making further redlines to the document, we will address the issues you raised in this email. As an initial matter, Defendants note that although the list appears to only contain 66 terms, because of the connectors and phraseology used by Plaintiffs, the proposed list exceeds 380 search terms. Defendants have agreed to the majority of these proposed terms, but cannot agree with others, as addressed below.

In response to Comments 1, 4, 5, 6, 7, 8, 9, 10, 17 in the draft circulated on 1/15, we are able to search for terms that contain hyphens, periods, or capitalized words, by using a single iteration of that term. For example, if we search for “voter id”, it is not necessary to also search for the terms “Voter I.D.”, and “voter i.d.” Accordingly, we will accept the changes we made to the Proposed Search Terms which reflect our ability to search with a single term.

Comment 2 - adding “or County” would require us to search for the term Shelby w/3 County and will lead to large amounts of unresponsive documents including any time a reference was made to Shelby County or to any county if it followed or preceded a reference to Shelby. Because this term is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant documents, Defendants do not agree to its inclusion in the list of search terms.

Comment 3 - Defendants agree to Plaintiffs change of “early voting” to “early vot*.”

Comment 11 - Defendants agree to reinserting the terms contained at 23.

Comment 12 - Defendants struck certain bills from Plaintiffs’ proposed search terms, because they are completely unrelated to the issues in this litigation. For example, SB 386 is the Board of Agriculture Swine Appointment Bill, which had the effect of adding a pork farmer to the NC Board of Agriculture. Defendants left intact all bills that related to
elections. Defendants do not agree to reinsert bills and legislation that have nothing to do with the issues in this litigation.

Comment 13 – the proposed terms would hit on any documents that contained the words “student” and any iteration of the word “vote”. These terms are overly broad and unduly burdensome as they will lead to the collection of large amounts of unrelated documents and communications.

Comment 14 – the proposed terms, as currently drafted, are overly broad and unduly burdensome as they would lead to the collection of large amounts of documents and communications completely unrelated to the issues in this litigation. For example, Defendants would be required to search for any time the terms “cost” and “election” appeared in the same document. The use of these terms is not likely to lead to the discovery of relevant data and should be excluded.

Comment 15 – the proposed terms are overly broad and unduly burdensome as they would lead to the collection of large amounts of unrelated documents, even with Plaintiffs’ proposal to narrow them by adding “w/30.” For example, these terms would yield hits anytime the words “poll” and “length” appeared within 30 words of each other. The use of these terms is not likely to lead to the discovery of relevant data and should be excluded.

Comment 16 - Defendants agree to reinsert the terms with the proposed change from Plaintiffs of “w/30” instead of “and.”

Comment 18 - Defendants do not agree to reinsert these terms as they are overly broad and unduly burdensome and would hit on large amounts of unrelated documents and communications. For example, any document that contained the words “birth certificate” and “ID” would be collected if these search terms were used. These terms are not likely to lead to the discovery of relevant data and should be excluded.

Comment 19 - Defendants agree to reinsert the terms at 43.

Comment 20 - Defendants agree to the addition of “Voter Identification Verification Act”

Comment 21-25 - Defendants agree and will make the changes to the typos.

Comment 26 - Defendants will respond to Plaintiffs on the proposed additional terms 54-66 by the end of the week.

We look forward to resolving these outstanding issues quickly so that we may begin searching emails.

Best,

PLEASE NOTE NEW ADDRESS
Riverfront Plaza - West Tower, 901 East Byrd Street, Suite 900 | Richmond, VA 23219 | Telephone: 804-663-2335 | Fax: 804-225-8641
amy.pocklington@ogletreedeakins.com | www.ogletreedeakins.com | Bio

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