

Ex. 2

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

UNITED STATES OF AMERICA,

Plaintiff,

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.

Civil Action No. 13-cv-861

UNITED STATES' FIRST SET OF REQUESTS
FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and the Scheduling Order entered by this Court on December 13, 2013 (ECF No. 30), Plaintiff United States of America requests that Defendants identify and produce the documents and items requested below for inspection and copying. Pursuant to Fed. R. Civ. P. 34, any substantive responses, responsive documents, objections, and accompanying privilege logs shall be served on counsel for the United States no later than February 3, 2014. This request is continuing in nature as provided by Rule 26(e) of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

1. “Defendants” as used herein means the State of North Carolina, the North Carolina State Board of Elections, and Kim W. Strach, and includes any agents, representatives, employees, or other person acting or purporting to act on behalf of any Defendant.
2. “The State” or “North Carolina” as used herein means the State of North Carolina and any of its agents, representatives, employees, or other person acting or purporting to act on its behalf.
3. The “State Board of Elections” means the North Carolina State Board of Elections and any of its agents, representatives, employees, members, or other person acting or purporting to act on its behalf.
4. “HB 589” as used herein means North Carolina House Bill 589 (2013-2014 Legislative Session), which was signed into law on August 12, 2013 and is designated Session Law 2013-381.
5. “Legislator” as used herein means a current or former elected member of the North Carolina House of Representatives or the North Carolina State Senate, including employees, staff, interns, consultants, representatives, designees, agents, or any persons acting or purporting to act on behalf of the North Carolina House of Representatives or the North Carolina State Senate, any committee thereof, or any elected member of the North Carolina House of Representatives or the North Carolina State Senate.

6. “Absentee ballot voting” as used herein means voting pursuant to North Carolina General Statutes § 163-231, and includes the process of requesting and receiving an absentee ballot pursuant to North Carolina General Statutes §§ 162-230.1 and 163-230.2.

7. “Early voting” as used herein means one-stop voting pursuant to North Carolina General Statutes § 163-227.2.

8. “Out-of-precinct provisional ballot” as used herein means a provisional ballot cast by a voter who is voting in a precinct other than his or her precinct of residence.

9. “Same-day registration” or “same-day voter registration” as used herein means registration and voting at one-stop voting sites pursuant to North Carolina General Statutes § 163-82.6A.

10. The phrase “contested provisions of HB 589” as used herein refers to the following four sets of voting changes enacted as part of HB 589 (including HB 589 parts 2, 16, 25, and 49): (1) changes to the early voting period; (2) elimination of same-day voter registration during the early voting period; (3) prohibition of the counting of out-of-precinct provisional ballots; and (4) imposition of a new photo identification requirement for in-person voters.

11. “Document” as used herein is synonymous in meaning and scope to the term “document” as used under Federal Rule of Civil Procedure 34 and the phrase “writings and recordings” as defined in Federal Rule of Evidence 1001, and includes, but is not limited to, any computer discs, tapes, and printouts, emails, databases, and any

handwritten, typewritten, printed, electronically-recorded, taped, graphic, machine-readable, or other material, of whatever nature and in whatever form, including all non-identical copies and drafts thereof, and all copies bearing any notation or mark not found on the original.

12. “Relating to” as used herein means concerning, referring to, reflecting, regarding, describing, evidencing, or constituting.

13. In responding to these requests, please produce all responsive documents in the possession, custody, or control of Defendants, or documents known to be available to Defendants, regardless of whether such documents are possessed directly by Defendants or past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, or other persons or entities acting on behalf of Defendants or subject to the Defendants’ control.

14. All references in these requests to an individual person or officer include any and all past and present agents, advisors, employees, representatives, attorneys, consultants, contractors, predecessors in office or position, and all other persons or entities acting on behalf of or under the control of such a person.

15. All references in these requests to any governmental entity, or any other type of organization, include its past and present officers, executives, directors, employees, agents, representatives, attorneys, consultants, contractors, and all other persons acting or purporting to act on behalf of the entity.

16. All documents shall be produced as they are kept in the usual course of business or be organized and labeled to correspond to each request. For all documents

produced, please identify the names of the person from whose files the documents were produced.

17. If any part of the requested information is stored on computer disc, tapes, or in any other electronic form, and is responsive to the request, it should be provided in the electronic form, consistent with the parties' agreement on production of electronically stored information or any court order relating to electronically stored information.

18. Documents available only in paper or hardcopy format shall be scanned into electronic format and produced as TIFF or JPEG files, consistent with the parties' agreement on production of electronically stored information or any court order relating to electronically stored information.

19. No portion of a document request may be left unanswered because an objection is interposed to another part of that request. If the Defendants object to any portion of a document request, the Defendants must state with specificity the grounds of any objections. Any ground not stated is waived.

20. If production of any document referred to in these requests is refused based on the assertion of a claim of privilege, with respect to each such document, please produce a privilege log consistent with the parties' agreement or any court order. In the case of any document concerning any meeting or conversation, state the date and subject matter of such meeting or conversation, and identify the persons who attended the meeting or participated in the conversation.

21. In the event that a responsive document has been destroyed or has passed out of the Defendants' custody or control, please identify the following information with

respect to each such document: its title, date, author(s), sender(s), recipient(s), subject matter, the circumstances under which it has become unavailable, and, if known, its current location and custodian.

22. In the event that a responsive document is not available in the form requested but is available in another form or can be obtained, in whole or in part, from other data in Defendants' possession, custody, or control, please so state and either supply the information requested in the form in which it is available or supply the data from which the information requested can be obtained.

23. Original and all non-identical copies of responsive documents, including all drafts, must be produced. If Defendants are unable to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts.

24. In construing these requests, apply the broadest construction, so as to produce the most comprehensive response. Construe the terms "and" and "or" either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside that scope. Words used in the masculine gender include the feminine, and words used in the singular include the plural.

25. These document requests apply to the period from January 1, 2000 through the present, unless otherwise limited or expanded by a particular request.

DOCUMENT REQUESTS

1. All documents produced in response to any request for production served upon any Defendant in *North Carolina State Conference of the NAACP, et al. v.*

McCrary, et al., Case No.: 1:13-CV-658, or *League of Women Voters of North Carolina, et al. v. North Carolina, et al.*, Case No.: 1:13-CV- 660.

2. All current training and user manuals relating to entering, editing, and removing data (including but not limited to any data relating to changes in voter status or address) in the State Election Information Management System (“SEIMS”).

3. All data used by Defendants to produce matches of registered-voter data with data sources maintained by the North Carolina Division of Motor Vehicles (“NCDMV”), and all documents referring or relating to a comparison of North Carolina’s registered voter database with NCDMV records.

4. All databases or other documents that contain lists of North Carolina residents who are members of the United States armed forces, possess a veterans identification card issued by the United States Department of Veterans Affairs, possess a tribal enrollment card issued by a federally- or State-recognized tribe, or possess a United States passport.

5. All documents relating to the sources, drafting, development, consideration, analysis, or implementation of HB 589 and the procedural sequence of introduction, consideration, and enactment of HB 589, including but not limited to communications between or among Legislators, as well as between or among Legislators and their staff, lobbyists, consultants, groups, organizations, county election officials, the State Board of Elections, and/or members of the public.

6. All documents from January 1, 2005, to the present relating to communications between, among, or with the office of the Governor, the office of the

Lieutenant Governor, the office of the Attorney General, Legislators, the State Board of Elections, the North Carolina Department of Transportation, county election officials, lobbyists, groups, associations, organizations, or members of the public concerning the State's consideration of any proposal to change the number of days or hours of early voting, modify or eliminate same-day registration, modify the requirements for obtaining or casting an absentee ballot, modify the procedures for counting out-of-precinct provisional ballots, or require voters to produce identification for voting, including but not limited to the drafting, introduction, consideration, enactment, or implementation of HB 589.

7. All documents relating to any and all alternatives to HB 589 and/or amendments relating to the contested provisions of HB 589 that were presented to, or considered, assessed, or reviewed by any Legislator during the drafting or consideration of HB 589.

8. The complete legislative record relating to HB 589, including but not limited to: bill summaries and status reports; each draft of the bill; each amendment offered and the status of each such amendment (*i.e.*, adopted, rejected, tabled, etc.); roll call votes; legislative committee minutes and reports; video and audio recordings and transcripts of floor and committee debates; video and audio recordings and transcripts of hearings; reports, analyses, or other documents presented during floor debates and hearings; all public comments received; study reports; and all correspondence sent or received by any Legislator, or any legislative staff person, relating to HB 589 or to the subjects addressed therein.

9. All documents from January 1, 2005, to the present relating to any effect that HB 589, or any other proposal to change the number of days or hours of early voting, modify or eliminate same-day registration, modify the requirements for obtaining or casting an absentee ballot, modify the procedures for counting out-of-precinct provisional ballots, or require voters to produce identification for voting, has, will have, or was projected to have on voters on account of race or color, or members of a language minority group.

10. All documents relating to any data tracking, recording, or study of voting patterns by race, from January 1, 2005, to the present in North Carolina.

11. All documents from January 1, 2005, to the present relating to the effect that the contested provisions of HB 589, or any other proposal to change the number of days or hours of early voting, modify or eliminate same-day registration, modify the requirements for obtaining or casting an absentee ballot, modify the procedures for counting out-of-precinct provisional ballots, or require voters to produce identification for voting, has, will have, or was projected to have on election administration costs, including but not limited to the costs of implementing HB 589 or such other proposals.

12. All documents from January 1, 2005, to the present relating to the impact of HB 589, or any other proposal to change the number of days or hours of early voting, modify or eliminate same-day registration, modify the requirements for obtaining or casting an absentee ballot, modify the procedures for counting out-of-precinct provisional ballots, or require voters to produce identification for voting, has, will have, or was projected to have on voter turnout, voter registration, or waiting times at polls.

13. All documents from January 1, 2005, to the present relating to the impact that HB 589, or any other proposal to change the number of days or hours of early voting, modify or eliminate same-day registration, modify the requirements for obtaining or casting an absentee ballot, modify the procedures for counting out-of-precinct provisional ballots, or require voters to produce identification for voting, has, will have, or was projected to have on use and acceptance of provisional ballots.

14. Documents sufficient to show every form of photo identification currently required or explicitly permitted by State law, regulation, or official practice to be issued by the State of North Carolina and its political subdivisions to persons over the age of 18.

15. All documents relating to the number of registered voters in North Carolina who do not have one or more of the forms of photo identification acceptable to vote under HB 589.

16. All documents relating to policies and procedures under which a North Carolina driver's license or special identification card for non-operators must be surrendered, canceled, or suspended and relating to the policies and procedures for reinstatement of such documents.

17. Documents sufficient to show all steps that an eligible voter must complete in order to obtain each form of identification listed under Section 163-166.13 of the North Carolina General Statutes (as amended by HB 589), and the costs associated with each step.

18. All documents relating to the process necessary to obtain a birth certificate from the North Carolina Department of Health and Human Services, including but not

limited to cost, locations of offices, documents needed to establish identity, and duration of the process.

19. All documents relating to the State of North Carolina's determination of those specific forms of identification that constitute a "United States military identification card," a "Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities," a "tribal enrollment card issued by a federally recognized tribe," or a "tribal enrollment card issued by a tribe recognized by [the] State under Chapter 71A of the General Statutes" under Section 163-166.13 of the North Carolina General Statutes (as amended by HB 589).

20. All documents relating to allegations and/or prosecutions of:

- a) Voter impersonation or other in-person voter fraud that occurred in the State of North Carolina from January 1, 2000, to the present;
- b) Voting or registering to vote in North Carolina by persons who are not citizens of the United States from January 1, 2000, to the present;
- c) Voter registration fraud, including voter registration fraud involving same-day registration, that occurred in the State of North Carolina from January 1, 2000 to the present;
- d) Fraud involving absentee ballot voting that occurred in the State of North Carolina from January 1, 2000 to the present;

21. All documents relating to or relied upon by the State Board of Elections in preparing the report entitled "Documented Cases of Voter Fraud in North Carolina,"

dated March 11, 2013, as well as all previous versions of this report and any other reports issued by the State Board of Elections providing similar information, including all documents relied upon by the State Board of Elections in preparing such previous versions and other reports.

22. All documents relating to any comparison of the rate of address verification for same-day voter registration with the rate of address verification for other methods of voter registration in North Carolina.

23. All documents relating to the waiting time of voters during the 2006, 2008, 2010, and 2012 elections in North Carolina.

24. All documents relating to communications between county boards of election and the State Board of Elections regarding the number of days and/or hours of early voting from January 1, 2008 to the present, including the State Board of Elections' analyses of and responses to such communications.

25. All documents, including but not limited to all forms, instructions, procedures, manuals, and training materials, relating to administering provisional ballots, including but not limited to determining the validity and eligibility of provisional ballots cast by voters who do not present a requisite form of photo identification under HB 589.

26. From January 1, 2000, to the present, all documents, including but not limited to all reports, forms, instructions, procedures, manuals, and training materials, prepared, produced, presented, or relied upon by the State Board of Elections relating to early voting, same-day registration, out-of-precinct provisional ballots, absentee ballot

voting (excluding documents exclusively relating to absentee voting under the Uniformed and Overseas Citizens Absentee Voting Act), voter fraud, or voter photo identification.

27. All documents relating to any administrative regulations or procedures drafted, proposed, or finalized pertaining to HB 589, including but not limited to: State Register publications; notices of proposed rulemaking; all public comments received; economic impact assessments; fiscal notes; written opinions; meeting and hearing notices; agendas; minutes; reports; audits; correspondence; audio and/or video recordings and transcripts of public hearings; and documents relating to the State Board of Elections' submission of proposed final regulations to the Rules Review Commission for consideration and approval, and to the consideration of such proposed final regulations by the Rules Review Commission and the North Carolina General Assembly.

28. All documents detailing the manner in which the State of North Carolina will provide information to the public concerning HB 589's requirements, including but not limited to mailings sent to voters, newspaper advertisements and the dates and publications in which they were published, television or radio spots and the dates and channels on which they were broadcast, and documents provided to in-person voters who are unable to present a form of photo identification required by HB 589.

29. All documents relating to any effort to provide voters who do not possess the requisite photo identification under HB 589 with a form of identification accepted under HB 589, including but not limited to:

- a. Documents detailing the development of the processes and procedures that the State of North Carolina has established;

- b. Documents detailing the budget and source of funding for all training, voter education, and outreach to voters identified in response to subpart (a); and
- c. Documents detailing alternatives to those processes and procedures identified in subpart (a).

30. All documents relating to the introduction, drafting, consideration, enactment, and/or implementation of the following legislation, including communications between or among Legislators, as well as between Legislators and their staff, lobbyists, consultants, groups, organizations, county election officials, the State Board of Elections, and/or members of the public concerning such bills, as well as all documents relating to such bills that were presented to, produced by, transmitted to, or relied upon by the State of North Carolina, including but not limited to the Governor, the Lieutenant Governor, the Attorney General, and the State Board of Elections:

- a. House Bill 351, Senate Bill 352, House Bill 658, and Senate Bill 657 of the 2011-2012 Legislative Session of the North Carolina General Assembly;
- b. House Bill 91 (Session Law 2007-253) and Senate Bill 195 from the 2007-2008 Legislative Session of the North Carolina General Assembly;
- c. Senate Bill 133 (Session Law 2005-2) from the 2005-2006 Legislative Session of the North Carolina General Assembly; and

d. House Bill 977 (Session Law 2001-337) and Senate Bill 386 from the 2001-2002 Legislative Session of the North Carolina General Assembly.

31. All document retention policies, practices, and systems in place with respect to Defendants and all Legislators since January 1, 2011, including but not limited to any document hold or notice issued in connection with the above captioned case, *United States v. North Carolina, et al.*

Dated: December 31, 2013

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Respectfully submitted,

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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on December 31, 2013, I served the foregoing **United States’ First Set of Requests for Production of Documents** upon all counsel of record by electronic mail, with the consent of the parties: and by placing a copy of same in the United States Mail, first class postage paid, to Defendants’ counsel:

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