

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

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, et al.,

Plaintiffs,

v.

PATRICK LLOYD MCCRORY, in his
official capacity as the Governor of North
Carolina, et al.,

Defendants.

**PLAINTIFFS' JOINT MOTION
FOR A STATUS CONFERENCE
ON OUTSTANDING
DISCOVERY ISSUES**

Civil Action No. 1:13-CV-658

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et
al.,

Defendants.

Civil Action No. 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA, *et*
al.,

Defendants.

Civil Action No. 13-cv-861

**PLAINTIFFS' JOINT MOTION FOR A STATUS CONFERENCE
ON OUTSTANDING DISCOVERY ISSUES**

Plaintiffs respectfully request that the Court hold a telephonic status conference to discuss outstanding discovery issues related to legislative privilege, production of documents, and the current schedule for the above-captioned matters. Defendants oppose this request for a telephonic status conference. For the Court's convenience, the Plaintiffs have conferred and are available to participate on October 16th, 20th, or 21st.

First, Plaintiffs request a status conference to discuss the disputes remaining concerning documents in the custody and control of the Defendants or State Legislators or both, including the resolution of certain legislative privilege issues currently pending with the Court. *See, e.g.*, Joint Status Report, Doc. 114; United States' Brief Regarding Legislator Documents, Doc. 120; Plaintiffs' Brief Regarding Outstanding Discovery Issues Related to Legislative Privilege, Doc. 121. This Court rejected Defendants' argument that state legislative privilege is absolute in this case and has instituted a flexible approach for the discovery of documents potentially subject to state legislative privilege. *See* Memorandum Order, Doc. 93, 12-CV-861 (May 15, 2014); Order, Doc. 79, 13-CV-861 (March 27, 2014).¹

According to this Court's March 27 and May 15 Orders, the parties, on May 22, 2014, submitted a Joint Status Report outlining their agreements with respect to particular categories of legislative documents. Joint Status Report, Doc. 114. For instance, in an

¹ All pleadings cited herein were filed in all three of the related cases; unless otherwise noted, this motion refers to documents filed in *United States v. North Carolina*, 1:13-CV-861.

effort to narrow the scope of the dispute before the Court, Plaintiffs agreed, at that time, not to seek production of communications solely between a state legislator and his or her personal legislative aide, and communications solely between state legislators and their attorneys in connection with this litigation. *Id.* 2, 3 ¶ 4(a, b). For their part, Defendants agreed to produce documents in the custody or control of state agencies that they had previously withheld based on legislative privilege. *Id.* 1, 2 ¶¶ 1-2. Despite these agreements, the parties could not agree on the production of remaining categories of responsive documents withheld by Defendants and the State Legislators.² *Id.* 3 ¶ 5.

On June 11, 2014, according to a schedule set forth in the Joint Status Report, 4 ¶ 6, all parties submitted briefs detailing these remaining document disputes. Docs. 119, 120, 121. Plaintiffs sought production of the disputed documents by June 30 (the deadline for filing a reply in support of motions for preliminary injunction). Doc. 121. On June 25, all parties filed response briefs. Docs. 119, 120, 121. Plaintiffs reiterated their request that Defendants produce all disputed documents by June 30. To date, this Court has not issued a ruling on the issues presented in these briefs, and the Defendants have not produced the requested discovery or privilege logs.

Plaintiffs maintain that the Court should order Defendants and the State Legislators to produce expeditiously documents within the State Legislators' custody or

² The private Plaintiffs previously moved to compel production of such documents requested from Defendants and 13 North Carolina legislators ("the State Legislators"). *See* Doc. 66 in case 1:13-CV-658; Doc. 70 in case 1:13-CV-660. Further, although Plaintiffs have noticed the depositions of certain State Legislators, they have agreed to await this Court's rulings on these categories of documents before further pursuing that deposition testimony.

control that reflect legislators' communications with outside third parties, including documents and communications exchanged between legislators and constituents, lobbyists, public interest groups, other outside groups or individuals, and legislator communications with state agencies. The Court should further order Defendants and the State Legislators to immediately provide a detailed privilege log for all remaining documents over which they claim privilege, including legislator to legislator communications, legislator to legislative staff communications (other than with a legislator's own personal aide), and legislator communications with outside counsel prior to the commencement of litigation on August 12, 2013.³

Second, Plaintiffs request that the Court convene a status conference to discuss the amendment of the Court's December 13, 2013, Scheduling Order (Doc. 30). Specifically, due to delays in the production on legislative documents and additional time required to complete expert discovery, Plaintiffs seek amendment of deadlines for expert reports, the close of discovery, and dispositive motions. Plaintiffs propose the following schedule:

³ As the District Court noted in ruling on the motions for preliminary injunction, "[i]n the totality of circumstances, Plaintiffs' evidence that the General Assembly acted at least in part with discriminatory animus certainly raises suspicions and presents substantial questions." Doc. 171, at 71. In its evaluation of these circumstances, the Court considered evidence from sources outside of the public legislative record, such as emails from legislators to the State Board of Elections. *Id.* at 59-61. Production of documents in the hands of the State Legislators will assist the parties in developing—and enable this Court to fully and fairly review—the complete record relating to the North Carolina General Assembly's consideration of S.L. 2013-831.

Existing	Proposed	Subject
Dec. 12, 2014	Jan. 16, 2015	Expert Reports and Disclosures under Rule 26(a)(2)(B) and 26(a)(2)(C)
Jan. 9, 2015	Feb. 13, 2015	Rebuttal Expert reports
Jan. 16, 2015	Feb. 20, 2015	Sur-Rebuttal Expert Reports
Feb. 2, 2015	Mar. 6, 2015	Close of Discovery
Feb. 12, 2015	Mar. 13, 2015	Notice of Dispositive Motions
Mar. 4, 2015	Apr. 1, 2015	Dispositive Motions Due
Apr. 3, 2015	May 1, 2015	Responses to Dispositive Motions Due
Apr. 17, 2015	May 15, 2015	Replies to Dispositive Motions Due

Defendants support this proposed schedule.

Dated: October 14, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on October 14, 2014, I electronically filed the foregoing Plaintiffs' Joint Motion for a Status Conference on Outstanding Discovery Issues, using the CM/ECF system in case numbers 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861, which will send notification of such filing to all counsel of record.

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