

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

THE CITY OF GREENSBORO,
LEWIS A. BRANDON III, JOYCE
JOHNSON, NELSON JOHNSON,
RICHARD ALAN KORITZ,
SANDRA SELF KORITZ, CHARLI
MAE SYKES, MAURICE WARREN
II, and GEORGEANNA BUTLER
WOMACK,

Plaintiffs,

v.

THE GUILFORD COUNTY
BOARD OF ELECTIONS,

Defendant.

No. 1:15-cv-559

**INDIVIDUAL PLAINTIFFS' REPLY IN SUPPORT OF THEIR OBJECTION TO
ORDER OF DECEMBER 20, 2016 GRANTING IN PART AND DENYING IN
PART PLAINTIFFS' MOTION TO COMPEL AND GRANTING SENATOR
TRUDY WADE'S MOTION TO QUASH**

Pursuant to Federal Rule of Civil Procedure 72(a), Lewis A. Brandon III, Joyce Johnson, Nelson Johnson, Richard Alan Koritz, Sandra Self Koritz, Charli Mae Sykes, Maurice Warren II, and Georgeanna Butler Womack (hereinafter collectively "Individual Plaintiffs") hereby submit this reply in support of their objection to Magistrate Judge's Order of December 20, 2016 Granting in Part and Denying in Part Individual Plaintiffs' Motion to Compel and Granting Senator Trudy Wade's Motion to Quash.

Individual Plaintiffs submit this reply to make the Court aware that one of the important factual predicates underlying Magistrate Judge Webster's December 20th

Order—that ample documents would be produced in response to the Judge’s Order Granting the Individual Plaintiffs’ Motion to Compel, thus obviating the need for Individual Plaintiffs to depose Senator Wade—has not come to pass, as explained below.

In his December 20th Order, Magistrate Judge Webster stated that “prohibiting deposition testimony but requiring Legislative Respondents to produce certain documents strikes the appropriate balance between protecting the legislative process and the need to ensure that Individual Plaintiffs’ constitutional rights are not violated.” ECF No. 111, at 14. He thus ordered the Legislative Respondents to produce by Friday, January 6, 2017, documents in three separate categories:

- (1) “Objective factual information available to Legislative Respondents before the legislation’s date of enactment must be produced.” ECF No. 111, at 10 (internal citations omitted).
- (2) “all documents or communications produced by legislators or their immediate aides before the redistricting legislation was enacted” that “pertains to, or reveals an awareness of: racial considerations employed in the districting process, implementation of discriminatory schemes as to the rights of Greensboro citizens to govern themselves, or the impact of redistricting upon the ability of minority voters to elect a candidate of choice.” ECF No. 111, at 10 (internal citations omitted).
- (3) “[a]ny other documents that reflect a violation of the Equal Protection Clause of the Fourteenth Amendment .” ECF No. 111, at 10.

In response to that order, on January 6, 2017, Legislative Respondents produced **only 21 documents**, and produced a privilege log with 554 unique entries. Review of that privilege log reveals that many entries listing documents the Legislative Respondents refuse to produce, reflect communications between legislators or legislative staff and individuals wholly outside the legislature, such that legislative privilege and confidentiality have plainly been waived. But more importantly, the incredibly small number of documents actually produced, in light of the scope of documents withheld, cannot possibly be, from either a factual or legal standpoint, viewed as an adequate enough production such that the minor inconvenience on Sen. Wade to submit to a limited deposition outweighs the pressing need for Individual Plaintiffs' constitutional injuries to be properly assessed and remedied. The privilege log and the twenty-one documents actually produced demonstrate that, as Individual Plaintiffs predicted, Legislative Respondents did not "self-identify and produce documents and communications" that "reflect a violation of the Equal Protection Clause of the Fourteenth Amendment" because that would have required them "to characterize their own communications as demonstrating intent to violate the constitution." ECF 113, at 16. Thus, the actual document production has substantiated Individual Plaintiffs' arguments that Magistrate Judge Webster's reliance on evidence not yet available to Individual Plaintiffs in deciding to quash the subpoena was clearly in error, and this Court can only be left with a "definite and firm conviction that a mistake has been committed." *Walton v. Johnson*, 440 F.3d 160, 173-74 (4th Cir. 2006).

CONCLUSION

For the foregoing reasons, and those articulated in Individual Plaintiffs' December 23rd Objection, Individual Plaintiffs respectfully request that this Court sustain this Objection, set aside Magistrate Judge Webster's December 20, 2016 order to the extent it granted Senator Wade's Motion to Quash, and order her to sit for deposition immediately.

Respectfully submitted this 13th day of January, 2017.

/s/ Allison J. Riggs
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this day electronically filed the foregoing in the above-titled action with the Clerk of the Court using the CM/ECF system, which will serve via electronic mail the following:

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Respectfully submitted this 13th day of January, 2017.

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