

# Attachment 3

E-mail string, May 17-20, 2010

## Simpson, Scott (CIV)

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**From:** Hunnius, Patrick [phunnius@la.whitecase.com]  
**Sent:** Thursday, May 20, 2010 5:35 PM  
**To:** Freeborne, Paul (CIV)  
**Cc:** Simpson, Scott (CIV); Woods, Dan; Gardner, Joshua E (CIV); Parker, Ryan (CIV)  
**Subject:** RE: Log Cabin Republicans v. United States: Rule 16 Conference

Paul,

Thanks for your letter.

I've already addressed, in prior correspondence, most of your contentions regarding the Rule 16 conference (and will not do so again here), but I did want to address a few points:

- the summary I provided in my email below of our deposition designations and exhibit and witness lists were provided to you as a courtesy; final designations, exhibit list and witness list will be served when they are actually due.
- Plaintiff did disclose, both in its Rule 26 disclosures and in its discovery responses that it intended to introduce evidence from, inter alia, individuals who had been discharged under the "Don't Ask, Don't Tell" policy. As to those witnesses (Almy, Vossler, Loverde, Reinhart, Kopfstein, and Rocha) the government now seeks to bar from testifying at trial, Log Cabin Republicans would not object to the government's deposing them pre-trial.

Regards,

Patrick O. Hunnius

Telephone: + 213-620-7714

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**From:** Freeborne, Paul (CIV) [mailto:Paul.Freeborne@usdoj.gov]  
**Sent:** Tuesday, May 18, 2010 3:55 PM  
**To:** Hunnius, Patrick; Woods, Dan  
**Cc:** Simpson, Scott (CIV); Gardner, Joshua E (CIV); Parker, Ryan (CIV)  
**Subject:** RE: Log Cabin Republicans v. United States: Rule 16 Conference

Patrick,

Please see the attached letter.

Paul

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**From:** Hunnius, Patrick [mailto:phunnius@la.whitecase.com]  
**Sent:** Monday, May 17, 2010 11:58 PM  
**To:** Freeborne, Paul (CIV); Woods, Dan  
**Cc:** Simpson, Scott (CIV); Gardner, Joshua E (CIV); Parker, Ryan (CIV)  
**Subject:** Re: Log Cabin Republicans v. United States: Rule 16 Conference

Paul,

Your email suggests that we are in violation of the Local Rules because we (1) have not sent you our witness list, exhibit

list, etc. in advance of a deadline arbitrarily set by you and (2) have not agreed to a time for a conference unilaterally chosen by you despite my repeatedly informing you that both I and Dan Woods have a conflict.

Suffice it to say, we disagree. First, there is no basis in the Local Rules for your position. Second, as of now, there is no scheduled trial date and no scheduled pretrial conference date and therefore no "due date" that we could be in violation of. Third, we offered to have the conference on Thursday, just one day after the deadline you suggested to the Court; you've provided no explanation regarding why our proposal is unworkable. Finally, your clients' summary judgment motion is still pending, and the Court's ruling on the motion will likely have an effect on both the witnesses and exhibits Log Cabin intends to rely on at trial. (For example, the Court could chose, assuming the motion were not granted, to dismiss one of Log Cabin's causes of action).

Nevertheless - and without conceding that we are obligated to disclose these matters at this time:

- the witnesses we intend to call at trial are: our expert witnesses, Alex Nicholson, Craig Engle, Terry Hamilton, C. Martin Meekins, Philip Bradley, Jamie Ensley, Mike Almy, Stephen Vossler, Anthony Loverde! Lee Reinhart, Jenny Kopfstein, Joseph Christopher Rocha;

- we intend to designate testimony from 4 transcripts (Dr. MacCoun and the 3 30(b)(6) witnesses); and

- at a minimum, we will be identifying as trial exhibits every document included in the appendix in support of Log Cabin's opposition to Defendant's summary judgment motion as well as several documents produced by Defendants.

Regards,

Patrick O. Hunnius  
Partner  
White & Case LLP  
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Los Angeles, CA 90071-2007  
Telephone: + 213 620 7714  
Mobile: + 818 205 4976  
Fax: + 213 687 0758  
phunnius@whitecase.com

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**From:** Freeborne, Paul (CIV) <Paul.Freeborne@usdoj.gov>  
**To:** Hunnius, Patrick; Woods, Dan  
**Cc:** Simpson, Scott (CIV) <Scott.Simpson@usdoj.gov>; Gardner, Joshua E (CIV) <Joshua.E.Gardner@usdoj.gov>; Parker, Ryan (CIV) <Ryan.Parker@usdoj.gov>  
**Sent:** Mon May 17 21:08:50 2010  
**Subject:** Re: Log Cabin Republicans v. United States: Rule 16 Conference

Patrick,

With respect to the email below, please provide plaintiff's final witness list and deposition designations by email tonight.

Paul

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**From:** Freeborne, Paul (CIV)  
**To:** 'phunnius@la.whitecase.com' <phunnius@la.whitecase.com>; 'dwoods@la.whitecase.com' <dwoods@la.whitecase.com>  
**Cc:** Simpson, Scott (CIV); Gardner, Joshua E (CIV); Parker, Ryan (CIV)  
**Sent:** Mon May 17 21:01:22 2010  
**Subject:** Re: Log Cabin Republicans v. United States: Rule 16 Conference

Patrick,

Please provide plaintiff's final exhibit list and deposition designations by email tonight. We intend to inform the Court that plaintiff failed to comply with the local rules by failing to provide an exhibit list at the time of the Rule 16 conference (and thus prevented the parties from conferring regarding defendants' objections regarding documents). Lastly, we expect that you or Dan will make yourself available at a mutually convenient time to meet and confer tomorrow. We are available to meet at any time before 5 p.m. EDT.

Paul

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**From:** Hunnius, Patrick <phunnius@la.whitecase.com>  
**To:** Freeborne, Paul (CIV); Woods, Dan <dwoods@la.whitecase.com>  
**Cc:** Simpson, Scott (CIV); Gardner, Joshua E (CIV); Parker, Ryan (CIV)  
**Sent:** Mon May 17 17:36:17 2010  
**Subject:** RE: Log Cabin Republicans v. United States: Rule 16 Conference

Paul,

I do not understand your insistence on having the Rule 16 conference tomorrow, particularly when: (1) in the [Proposed] Order you submitted to the Court last week, you the conference be held on May 19; and (2) I previously told you that Dan and I are not available. In addition, our exhibit list is not complete, so discussing it tomorrow would be premature.

Nevertheless, if you want to hold a meet and confer regarding the government's intended motions in limine or other pre-trial motions tomorrow either Dan or I could make ourselves available late tomorrow afternoon (our time). At present, we do not intend to file any motions in limine.

Regards,

Patrick O. Hunnius

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**From:** Freeborne, Paul (CIV) [mailto:Paul.Freeborne@usdoj.gov]  
**Sent:** Monday, May 17, 2010 12:59 PM  
**To:** Hunnius, Patrick; Woods, Dan  
**Cc:** Simpson, Scott (CIV); Gardner, Joshua E (CIV); Parker, Ryan (CIV)  
**Subject:** RE: Log Cabin Republicans v. United States: Rule 16 Conference

Patrick,

Thanks for your response, but the Rule 16 conference must occur no later than tomorrow. The parties have both proposed that the pretrial conference be held on June 28, 2010. If that date is adopted by the Court, all motions *in limine* must be filed no later than May 28, 2010 so that they can be properly noticed for argument at the pretrial conference. And, as you are aware, Local Rule 7-3 requires that the meet and confer be held no later than 10 days before the date of filing, which is tomorrow (the 18<sup>th</sup>). Accordingly, please let us know when you are available. Also, please fax plaintiff's exhibit list, witness list, and deposition transcript designations today so that we can prepare for tomorrow's meeting.

Paul

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**From:** Hunnius, Patrick [mailto:phunnius@la.whitecase.com]  
**Sent:** Monday, May 17, 2010 2:30 PM  
**To:** Freeborne, Paul (CIV); Woods, Dan  
**Cc:** Simpson, Scott (CIV); Gardner, Joshua E (CIV); Parker, Ryan (CIV)  
**Subject:** RE: Log Cabin Republicans v. United States: Rule 16 Conference

Paul,

Dan and I aren't available tomorrow and Wednesday, but could have the meet and confer on Thursday.

Patrick O. Hunnius

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**From:** Freeborne, Paul (CIV) [mailto:Paul.Freeborne@usdoj.gov]  
**Sent:** Monday, May 17, 2010 8:45 AM  
**To:** Hunnius, Patrick; Woods, Dan  
**Cc:** Simpson, Scott (CIV); Gardner, Joshua E (CIV); Parker, Ryan (CIV); Freeborne, Paul (CIV)  
**Subject:** Log Cabin Republicans v. United States: Rule 16 Conference

Patrick & Dan,

Although the Court has yet to rule on the parties' proposed scheduling orders, in the interest of moving the case forward and given that the Court may set trial to begin on July 13th, we would like to have the Rule 16 meet and confer on Tuesday, May 18, 2010 and to exchange witness lists, exhibit lists, deposition designations, and to discuss proposed stipulated facts at that time.

We also intend to discuss motions *in limine* and other pre-trial motions. Please let us know when you are available.

Paul G. Freeborne  
Trial Attorney  
United States Department of Justice, Civil Division  
Federal Programs Branch  
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