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Date: 12/23/2008 3:09:24 PM
Subject: Summers v. Adams, et al.

Swati,

Here is what we discussed as an explanation for our not taking an appeal of the preliminary injunction to the Fourth Circuit.

The Plaintiffs in the law suit have asked the District Court for permission to amend their Complaint. An appeal of the preliminary injunction would only serve to delay the District Court's ruling on that issue and would forestall the ultimate ruling on the merits of the case. The State is secure in its belief that it will win this suit and does not want to do anything that will delay the meaningful part of the process.

Please work with that as you see best.

As I see it, no one needs to make any public announcement about appealing or not appealing the preliminary injunction. All we need to do is tell Nelson Mullins not to file an appeal (with a copy to Emory Smith at the AG's Office). Nothing public should emit from the Attorney General's Office, since that office is our attorney of record. (Come to think of it, since the Attorney General's Office has been our defense counsel, what were they doing making public statements about what the DMV should or should not do?)

If the press inquires about why we did not appeal the preliminary injunction, the answer should be "We cannot comment on trial strategy."

Val

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