

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THE OHIO ORGANIZING COLLABORATIVE, <i>et al.</i>,	:	
	:	
Plaintiffs,	:	Case No. 2:15-CV-1802
	:	
v.	:	JUDGE WATSON
	:	
JON HUSTED, <i>et al.</i>,	:	MAGISTRATE JUDGE KING
	:	
Defendants.	:	

**DEFENDANT OHIO SECRETARY OF STATE’S AND DEFENDANT OHIO
ATTORNEY GENERAL’S RULE 26(F) REPORT**

Defendants Ohio Secretary of State Jon Husted and Ohio Attorney General Mike DeWine (collectively, “Ohio”) hereby submit their Rule 26(f) report and state as follows:

Counsel for the parties conferred and discussed possible plans for a case schedule as well as other Rule 26(f) topics. Counsel participated in teleconferences on June 9, 2015 and June 11, 2015 and also exchanged email correspondence related to the schedule. The parties were unable to reach an agreement on two principal issues:

- (1) The trial schedule
- (2) Plaintiffs’ request to take 30 depositions

Given the impasse, the parties agreed to submit separate Rule 26(f) reports.

A. Rule 26(f) Report

- 1. Consent to Magistrate Judge.** Ohio does not consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. 636 (c).

2. Initial Disclosures. The parties have exchanged initial disclosures. In addition, Ohio filed its Answer to Plaintiffs' Complaint.

3. Jurisdiction and Venue

a. Describe any contested issues relating to: (1) subject matter jurisdiction, (2) personal jurisdiction and/or (3) venue: (1) Plaintiffs lack standing, depriving this Court of subject matter jurisdiction. (2) No contested issues. (3) No contested issues.

b. Describe the discovery, if any, that will be necessary to the resolution of issues relating to jurisdiction and venue: Ohio will take discovery related to Plaintiffs' lack of standing.

c. Recommended date for filing motions addressing jurisdiction and/or venue: Ohio expects it will address the issue of standing during dispositive merit briefing.

4. Amendments to Pleading and/or Joinder of Parties

a. Recommended date for filing motion/stipulation to amend the pleadings or to add additional parties: Ohio's position is that the standard rules of procedure set forth in Rule 15 of the Federal Rules of Civil Procedure should govern.

b. If class action, recommended date for filing motion to certify the class: Not applicable.

5. Recommended Discovery Plan

- a. **Describe the subjects on which discovery is to be sought and the nature and extent of discovery that each party will need:** Ohio will seek discovery to defend against Plaintiffs' claims.
- b. **What changes should be made, if any, in the limitations on discovery imposed by the Federal Rules of Civil Procedure or the local rules of this Court?** Ohio's position is that the standard rules of procedure related to discovery should govern in this case. During the pre-trial teleconferences, Plaintiffs indicated that they would request *thirty* depositions in this matter—*twenty* depositions more than the ten permitted by the federal rules. Ohio will oppose Plaintiffs' request for thirty depositions and requests the opportunity to brief this issue after Plaintiffs articulate who they want to depose and why.
- c. **The case presents the following issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced:** Ohio does not anticipate any issues related to electronically stored information.
- d. **This case presents the following issues relating to claims of privilege or of protection as trial preparation materials:** Plaintiffs' deposition requests will likely implicate relevancy and privilege issues.
 - i. **Have the parties agreed on a procedure to assert such claims AFTER production?** No.
- e. **Identify the discovery, if any, that can be deferred pending settlement discussion and/or resolution of potentially dispositive motions:** None.

f. The parties recommend that discovery should proceed in phases, as follows: Not applicable.

g. Describe the areas in which expert testimony is expected and indicate whether each expert will be specially retained within the meaning of F.R.Civ.P.26(a)(2): At this time, Ohio anticipates using affirmative and rebuttal experts.

i. Recommended date for making primary expert designations:

Please see discussion of proposed case schedule that follows.

ii. Recommended date for making rebuttal expert designations:

Please see discussion of proposed case schedule that follows.

h. Recommended discovery completion date: Please see discussion of proposed case schedule that follows.

6. Dispositive Motion(s)

a. Recommended date for filing dispositive motions: Please see discussion of proposed case schedule that follows.

7. Settlement Discussions

a. Has a settlement demand been made? No. A response? Not applicable.

b. Date by which a settlement demand can be made: Not applicable.

c. Date by which a response can be made: Ohio anticipates that a response to a settlement demand can be made within two weeks after receipt of the demand.

8. Settlement Week Referral. Ohio anticipates that the September 2015 Settlement Week is the earliest date reasonably likely to be productive.

9. Other matters for the attention of the Court:

The parties do not agree on a case schedule. To better facilitate the July 8, 2015 pre-trial conference, the following paragraphs describe Ohio's two proposed schedules and some of Ohio's concerns with Plaintiffs' proposed schedule.

Ohio's Initial Proposal for a Trial on the Briefs. Ohio initially proposed an accelerated schedule with a "trial on the briefs," rather than a live trial. This timetable would expedite resolution of this lawsuit, and provides the best possibility for a complete resolution in advance of the 2016 primary election. It provides a reasonable opportunity for an expedited appeal before the March 2016 primary election. The approach would also save significant expense for both sides by avoiding the need to fly experts and lawyers to Columbus. Ohio therefore proposed the following schedule:

July 17, 2015	Identification of Affirmative Experts
August 28, 2015	Affirmative Expert Reports Due
September 11, 2015	Identification of Rebuttal Experts
October 2, 2015	Rebuttal Expert Reports Due
October 30, 2015	Close of Discovery
November 13, 2015	Concurrent Merit Briefs
November 13, 2015	Identification of Trial Record
November 25, 2015	Motions to Exclude
December 18, 2015	Concurrent Opposition Merit Briefs
December 18, 2015	Responses to Motions to Exclude

Plaintiffs did not agree to this schedule or to a trial on the briefs. Ohio continues to recommend this schedule and believes that this case can be decided on the papers.

Ohio's Alternative Proposal. In the spirit of compromise, Ohio offered a second proposed schedule that includes trial-related deadlines:

July 17, 2015	Identification of Affirmative Experts
September 18, 2015	Affirmative Expert Reports Due
September 25, 2015	Identification of Rebuttal Experts
November 6, 2015	Rebuttal Expert Reports Due
November 18, 2015	Close of Fact and Expert Discovery
December 18, 2015	Summary Judgment Brief Deadline
January 22, 2015	Deadline for Oppositions to Summary Judgment
February 5, 2016	Deadline for Summary Judgment Replies
February 19, 2016	Deadline to Designate Trial Exhibits, Witness Lists, Transcripts and Portions of Transcripts
March 11, 2016	Deadline for Motions in Limine / Daubert Motions Objections to Transcript Testimony
April 1, 2016	Deadline for Oppositions to Motions in Limine / Daubert Motions / Oppositions to Transcript Testimony Objections
April 6, 2016	Deadline for Trial Briefs
April 11, 2016	Trial begins

This schedule contemplates a trial after the March 2016 primary but is the earliest realistic time frame for a complete course of litigation in preparation for a live trial. Plaintiffs did not agree to this schedule.

Plaintiffs' Proposal. Plaintiffs were unwilling to agree to a post-primary trial date although they recognized that any relief they obtain pre-primary may not be implemented for that election. Plaintiffs provided the following proposed schedule:

June 19, 2015	Submit First Set of Discovery Requests
October 12, 2015	Primary Expert Designations/Reports
November 12, 2015	Rebuttal Expert Designations/Reports
November 24, 2015	Surrebutal Expert Reports
December 11, 2015	Discovery Cutoff/Dispositive Motions Due
January 8, 2016	Response to Dispositive Motions
January 20, 2016	Replies to Dispositive Motions Due
February 15, 2016 or March 1, 2016	Trial Begins

Ohio does not agree with Plaintiffs' proposed schedule for a number of reasons, including the following:

- Plaintiffs propose a live trial beginning on either February 15, 2016 or March 1, 2016. Either way, the trial would fall during the worst possible time for Ohio's election officials (anticipated witnesses for all parties): right in the middle of preparing for and managing the presidential primary election. (Election Day is March 15, 2016, and early in-person voting begins on February 17, 2016).

- Plaintiffs' proposal affords no time for appeal prior to the primary election and moreover, under Plaintiffs' plan, any changes to election procedures would be virtually impossible to implement for the primary election.

- Plaintiffs' schedule omits dates (and does not provide sufficient time) for necessary pre-trial steps including: designating trial materials, drafting motions in limine, drafting Daubert motions, listing objections to trial designations, responding to motions in limine, responding to Daubert motions, responding to objections to trial designations, and drafting trial briefs. Plaintiffs' plan also does not provide time to prepare for the substantive aspects of the trial itself.

- Plaintiffs propose filing summary judgment briefs on the last day of discovery. Under this plan, Ohio could receive a deluge of discovery on the same day that Ohio files its summary judgment brief. This is highly prejudicial to Ohio, particularly given Plaintiffs' numerous claims that will need to be addressed in the briefs, and Ohio's view that this case can be resolved with dispositive briefing.

- Plaintiffs' proposal affords inadequate time for rebuttal expert reports (four weeks) while giving ample time for Plaintiffs to craft their reports (over five months since the date the complaint was filed). Ohio will likely file both affirmative and rebuttal reports, but because they are Defendants, Ohio will likely rely much more than Plaintiffs on rebuttal reports.

Conclusion. Ohio regrets that the parties have been unable to reach an agreement as to the schedule. Ohio offered two schedules that are both fair and workable and would prejudice neither side. Ohio's preferred schedule calls for a trial on the briefs, provides ample time for all parties to develop evidence and present written arguments, and then includes a window for either side to seek an expedited appeal in advance of the March 2016 primary. Ohio's alternative

proposal (which includes a live trial) is also an aggressive litigation timetable that would resolve the case within one year after Plaintiffs filed the complaint, but still provides sufficient time for dispositive briefing, rebuttal expert reports, and the important trial-preparation steps that are missing from Plaintiffs' proposal.

Respectfully submitted,

MIKE DEWINE
Ohio Attorney General

/s/ Steven T. Voigt

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*Counsel for Defendants
Ohio Secretary of State Husted and
Ohio Attorney General DeWine*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the U.S. District Court, Southern District of Ohio, on July 1, 2015, and served upon all parties of record via the court's electronic filing system.

/s/ Steven T. Voigt

STEVEN T. VOIGT

Senior Assistant Attorney General

General Information

Court	United States District Court for the Southern District of Ohio; United States District Court for the Southern District of Ohio
Federal Nature of Suit	Civil Rights - Voting[441]
Docket Number	2:15-cv-01802