

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

THE OHIO ORGANIZING
COLLABORATIVE; JORDAN ISERN
CAROL BIEHLE; and BRUCE BUTCHER

:
: Case No. 2:15cv1802
: District Judge: Judge Watson
: Magistrate Judge: Judge King

Plaintiff(s)

vs.

:
: RULE 26(f) REPORT OF PLAINTIFFS
: (to be filed no fewer than seven (7)
: days prior to the Rule 16 Conference)

JON HUSTED, in his official capacity as
Secretary of State of the State of Ohio; and
MIKE DEWINE in his official capacity as
Attorney General of the State of Ohio

Defendant(s)

:
:

1. Pursuant to F.R. Civ.P. 26(f), a meeting was held on June 9 and June 11, 2015 and was attended by:

Donald J. McTigue, counsel for Plaintiff(s) Ohio Organizing Collaborative, et al.
J. Corey Colombo, counsel for Plaintiff(s) Ohio Organizing Collaborative, et al.
Bruce V. Spiva, counsel for Plaintiff(s) Ohio Organizing Collaborative, et al.
Joshua L. Kaul, counsel for Plaintiff(s) Ohio Organizing Collaborative, et al.
Rhett P. Martin, counsel for Plaintiff(s) Ohio Organizing Collaborative, et al.

Steven T. Voight, counsel for Defendant(s) Jon Husted, et al.
Sarah Pierce, counsel for Defendant(s) Jon Husted, et al.

2. **Consent to Magistrate Judge.** The parties:

_____ unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. 636 (c).

X do not unanimously consent to the jurisdiction of the United States Magistrate Judge pursuant to 28 U.S.C. 636 (c).

3. **Initial Disclosures.** The parties:

X have exchanged the initial disclosures required by Rule 26(a)(1).

4. **Jurisdiction and Venue**

- a. Describing any contested issues relating to: (1) subject matter jurisdiction, (2) jurisdiction and/or (3) venue:

None

- b. Describe the discovery, if any, that will be necessary to the resolution of issues relating to jurisdiction and venue:

None

- c. Recommended date for filing motions addressing jurisdiction and/or venue:

None

5. Amendments to Pleading and/or Joinder of Parties

- a. Recommended date for filing motion/stipulation to amend the pleadings or to add additional parties: **December 11, 2015**

- b. If class action, recommended date for filing motion to certify the class: N/A

6. 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:

Plaintiffs plan to submit requests for documents, interrogatories, third-party subpoenas, requests for admission, and depositions. Discovery subjects will broadly include: 1) the circumstances surrounding the enactment and adoption, intent, and implementation of S.B. 200, S.B. 205, S.B. 216, S.B. 238 and Directives 2014-06, 2014-15, 2014-17, 2014-26, and 2014-30; 2) the impact upon various segments of the Ohio electorate and the electorate as a whole of the elimination of "Golden Week," increased requirements for casting absentee and provisional ballots, the exclusion of certain voters from the mailing of unsolicited absentee ballot applications, reductions in the number of DRE voting machines, the limitation of one early in-person voting location per county, the consolidation of poll books at multi-precinct polling locations, and the failure to provide an opportunity to cure mistakes on the provisional ballot affirmation forms.

- 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?

Plaintiffs request that the limitations on discovery be adjusted to allow up to thirty (30) depositions, and up to eighty (80) interrogatories total.

- 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:

The Parties did not identify any apparent issues related to the discovery of electronically stored information, and have agreed that all such information will be produced in a format compatible

with Concordance, and that native format, TIFF images, searchable formats and metadata of all documents will be included.

d. The case presents the following issues relating to claims of privilege or of protection as trial preparation materials:

Plaintiffs may seek a protective order to safeguard their personal information.

i. Have the parties agreed on a procedure to assert such claims AFTER production?

No

Yes

Yes, and the parties ask that the Court include their agreement in an Order.

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:

None

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):

Plaintiffs will offer expert testimony on: 1) the interaction between the on-going effects of Ohio's history of racial discrimination and the Challenged Provisions' impact on minority voting rights; 2) the burdens imposed by the Challenged Provisions on voting rights, including the impact of the Challenged Provisions on wait times at the polls. Plaintiffs may also offer expert testimony on 1) the legislative intent underlying the Challenged Provisions; and 2) allegations of fraud used to justify the Challenged Provisions.

i. Recommended date for making primary expert designations:

November 2, 2015

ii. Recommended date for making rebuttal expert designations:

November 30, 2015

h. Recommended discovery completion date: **December 11, 2015**

7. **Dispositive Motion(s)**

- a. Recommended date for filing dispositive motions: **December 11, 2015**

8. Settlement Discussions

- a. Has a settlement demand been made: **NO**
- b. Date by which a settlement demand can be made: _____
- c. Date by which a response can be made: _____

9. Settlement Week Referral

The earliest Settlement Week referral reasonably likely to be productive is the

December 2015 Settlement Week

10. Other matters for the attention of the Court:

Plaintiffs would like to apprise the Court of the need for an early trial date that will allow any changes to Ohio's election laws resulting from this suit to be implemented in time for the November 2016 general elections. In order to avoid the problems with implementing changes to election laws close to an election outlined in the U.S. Supreme Court's decision in *Purcell v. Gonzalez*, 549 U.S. 1 (2006), Plaintiffs request March 1, 2015 as the trial start date.

Additionally, Plaintiffs understand that Defendants intend to request that this Court forego dispositive motions as well as a live trial and decide the suit solely upon briefs and a factual record designated by the parties. Plaintiffs are willing to abandon the summary judgment phase, but they are not willing to forego trial.

Plaintiffs respectfully object to any procedure that abrogates their due process right to "a full opportunity to present their . . . case[]" by depriving them of the opportunity to introduce affirmative evidence through live testimony by factual and expert witnesses and the opportunity to cross-examine Defendants' witnesses before this Court. *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). Plaintiffs maintain that most of the claims here turn mainly on factual issues that can only be fully developed through the procedures of a standard trial, and that Defendants' attempt to eliminate those procedures unduly prejudices Plaintiffs' ability to present their case.

Signatures:

Date: July 1, 2015

Attorney(s) for Plaintiff(s):

s/ Donald J. McTigue
Donald J. McTigue (0022849)
Trial Attorney
J. Corey Colombo (0072398)
McTigue McGinnis & Colombo LLC
545 East Town Street
Columbus, OH 43215
Telephone: (614) 263-7000
Facsimile: (614) 263-7078
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com

Marc E. Elias
Bruce V. Spiva
Elisabeth C. Frost
Rhett P. Martin
Perkins Coie LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211

MElias@perkinscoie.com
BSpiva@perkinscoie.com
EFrost@perkinscoie.com
RMartin@perkinscoie.com

Joshua L. Kaul
Perkins Coie LLP
1 East Main Street
Madison, WI 53703-5118
Telephone: (608) 294-4007
Facsimile: (608) 663-7499
JKaul@perkinscoie.com

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