

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
NORTHWEST AUSTIN MUNICIPAL)	
UTILITY DISTRICT NUMBER ONE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:06-cv-1384
)	
ALBERTO GONZALES,)	Three-judge court (PLF, DST, EGS)
Attorney General of the United States,)	
)	
Defendant.)	
_____)	

LOCAL RULE 16.3 REPORT

Pursuant to this Court's Orders of November 15 and 17, 2006 (Docket #'s 40, 46), Fed R. Civ. P. 26(f) and Local Rule 16.3, Plaintiff Northwest Austin Municipal Utility District Number One, Defendant Attorney General of the United States Alberto Gonzales, and the Defendant-Intervenors (Texas State Conference of NAACP Branches, Austin Branch of the NAACP, Rodney and Nicole Louis, and David, Lisa and Gabriel Diaz, People for the American Way, Nathaniel Lesane, Angie Garcia, Jovita Casarez, Ofelia Zapata, and Travis County, Texas) respectfully submit this joint report outlining the parties' discovery plan, agreements reached between the parties, matters upon which the parties disagree, and proposed scheduling orders.

A telephone conference between the parties was held on November 16, 2006, with the following participants:

Gregory S. Coleman, Erik S. Jaffe, and Christian J. Ward for Plaintiff Northwest Austin Municipal Utility District Number One;

T. Christian Herren Jr. for Defendant Attorney General Alberto Gonzales;

Debo P. Adegbile and Kristen M. Clarke for Defendant-Intervenors Rodney and Nicole Louis;

Nina Perales for Defendant-Intervenors David, Lisa and Gabriel Diaz;

Jon M. Greenbaum, Benjamin J. Blustein, Marcia Johnson-Blanco, Paul R.Q. Wolfson and Michael J. Gottlieb for Defendant-Intervenors Texas State Conference of NAACP Branches and Austin Branch of the NAACP;

M. Laughlin McDonald for Defendant-Intervenor Nathaniel Lesane; and,

J. Gerald Hebert and Max Renea Hicks for Defendant-Intervenor Travis County, Texas.

Subsequent discussions have been held by and between the parties, including with Elliott Minberg, as counsel for Defendant-Intervenor People for the American Way (who had consented to the counsel for the NAACP representing their interests at the telephone conference) and with Jose Garza as counsel for Defendant-Intervenors Angie Garcia, Jovita Casarez, Ofelia Zapata (who were allowed to intervene after the telephone conference had occurred), to produce this Report. Consistent with Local Rule 16.3(c), the parties jointly report to the Court on their discussions as follows:

1. STATEMENT OF FACTS AND STATUTORY GROUNDS

This is an action brought by the Plaintiff Northwest Austin Municipal Utility District Number One seeking a declaratory judgment from this Court, pursuant to Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a), that it is entitled to bailout from the preclearance requirement of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, or, in the alternative, if Plaintiff cannot bailout, seeking a declaratory judgment that continued application of Section 5 is thereby unconstitutional. This is the only Court in which an action can be brought seeking

bailout under Section 4(a) of the Voting Rights Act, or seeking a determination that Section 5 of the Voting Rights Act is unconstitutional.

Defendant and Defendant-Intervenors contend that the Plaintiff is not a “political subdivision” that is eligible to file a bailout action under Section 4(a) of the Voting Rights Act, and contend that the constitutionality of Section 5 of the Voting Rights Act is well-settled by decisions of the United States Supreme Court.

II. DISCOVERY PLAN

The parties agree that initial disclosures pursuant to Rule 26(a)(1), Fed. R. Civ. P., shall occur no later than December 15, 2006. The parties have agreed that a brief period of fact discovery shall commence on December 18, 2006 and shall close on March 1, 2007. The parties disagree on the schedule for expert discovery, as outlined in Item 9 below and as outlined in their attached alternative proposed orders.

III. LOCAL RULE 16.3 MATTERS

The parties hereby report to the Court on the 14 matters listed in Local Rule 16.3, as follows:

1. *Whether the case is likely to be disposed of by dispositive motion; and whether, if a dispositive motion has already been filed, the parties should recommend to the court that discovery or other matters should await a decision on the motion.*

The parties agree that all of the issues in this case can be resolved through the filing of cross-motions for summary judgment. The parties disagree on the schedule for filing such motions, as outlined in Item 6 below and as outlined in their attached alternative proposed orders. The parties agree that a brief period of discovery should precede the filing of cross-

motions for summary judgment.

2. *The date by which any other parties shall be joined or the pleadings amended, and whether some or all the factual and legal issues can be agreed upon or narrowed.*

The parties disagree on the date for amending pleadings and joining additional parties: Plaintiff proposes a date of February 1, 2007, while Defendant and Defendant-Intervenors propose a date of December 15, 2006. The parties agree that all the issues involved in this case can be resolved through cross-motions for summary judgment. The parties agree that they will work to stipulate to as many facts as possible in order to expedite the resolution of this matter.

3. *Whether the case should be assigned to a magistrate judge for all purposes, including trial.*

As required by 42 U.S.C. § 1973b, and pursuant to 28 U.S.C. § 2284, the Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, on September 6, 2006, appointed a three-judge district court to hear and decide this case. Accordingly, the parties agree that this case should not be assigned to a magistrate judge.

4. *Whether there is a realistic possibility of settling the case.*

The parties agree that there is no realistic possibility of settling the case.

5. *Whether the case could benefit from the Court's alternative dispute resolution (ADR) procedures (or some other form of ADR); what related steps should be taken to facilitate such ADR; and whether counsel have discussed ADR and their response to this provision with their clients.*

The parties agree that the Court's ADR procedures will not assist in resolving the issues in this case.

6. *Whether the case can be resolved by summary judgment or motion to dismiss; dates for filing dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision on the motions.*

The parties agree that this case can be resolved by the filing of cross-motions for summary judgment. The parties disagree on the schedule for filing such cross-motions.

Plaintiff proposes that the Court set a date for the filing of dispositive motions no earlier than 60 days after the completion of discovery in this case. If expert discovery is required because Defendant or Defendant-Intervenors designate experts in this case, Plaintiff proposes a dispositive motion deadline no earlier than October 1, 2007. Oppositions to any dispositive motions should be due within 30 days, and any reply within 21 days of the opposition.

Defendant and Defendant-Intervenors propose that the Court set a single date for the filing of cross-motions for summary judgment addressing all issues in the case, so that the Court need consider only one round of briefs, oppositions and replies, and can thereafter issue a decision resolving all issues. Defendant and Defendant-Intervenors propose that the cross-motions on all issues be due on April 16, 2007, with oppositions due 30 days after the initial cross-motions, and replies due 21 days after the oppositions.

7. *Whether the parties should stipulate to dispense with the initial disclosures required by Rule 26(a)(1), F.R.Civ.P., and if not, what if any changes should be made in the scope, form or timing of those disclosures.*

The initial disclosures required by Rule 26(a)(1) will be made by all parties by no later than December 15, 2006.

8. *The anticipated extent of discovery, how long discovery should take, what limits should be placed on discovery; whether a protective order is appropriate; and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.*

The parties have agreed that a brief period of fact discovery will occur beginning on December 18, 2006 and closing on March 1, 2007. If experts are designated, the parties agree that there should be a period of expert discovery, but disagree as to the schedule for that expert discovery period, as outlined in Item 9 below and as outlined in the attached alternative proposed orders. The parties do not believe that discovery will be extensive, and agree that no limits or protective orders appear necessary at this time.

9. *Whether the requirement of exchange of expert witness reports and information pursuant to Rule 26(a)(2), F.R.Civ.P., should be modified, and whether and when depositions of experts should occur.*

The parties are uncertain at this time whether experts will be engaged in this case. Plaintiff believes that expert testimony is unnecessary in this case. Plaintiff proposes that if Defendant or Defendant-Intervenors retain experts, they will disclose the identification of those retained experts, respective vitae, reports of their expert opinions, and contractual agreement regarding the nature and scope of expert's services by March 1, 2007, pursuant to Rule 26(a)(2)(A), Fed. R. Civ. P. Plaintiff proposes that if Defendant or Defendant-Intervenors designate any experts, Plaintiff may designate rebuttal experts and disclose any such rebuttal experts and exchange reports of any such rebuttal experts by May 1, 2007. Plaintiff proposes that depositions of experts shall occur after May 1, 2007, and no later than August 1, 2007.

Defendant and Defendant-Intervenors propose that all parties shall identify retained experts, if any, respective vitae and contractual agreements regarding the nature and scope of expert services by January 16, 2007. Defendant and Defendant-Intervenors further propose that all parties shall identify retained rebuttal experts, if any, respective vitae and contractual agreements regarding the nature and scope of expert services by February 16, 2007. Defendant and Defendant-Intervenors further propose that all parties shall exchange their expert reports by March 1, 2007, and that all parties shall exchange their rebuttal expert reports by April 2, 2007. Defendant and Defendant-Intervenors propose that expert discovery close on April 9, 2007.

10. *In class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, and opposition and reply, and for oral argument and/or an evidentiary hearing on the motion and a proposed date for decision.*

Since this is not a class action, this item is inapplicable.

11. *Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.*

The parties do not believe that any bifurcation of discovery is necessary, and the parties do not anticipate a need for a trial.

12. *The date for the pretrial conference (understanding that a trial will take place 30 to 60 days thereafter).*

The parties agree that the pretrial conference should be scheduled for December 11, 2007, in the event that any issues remain after the Court's decision on the cross-motions for summary judgment.

13. *Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.*

As the parties believe that it will not be necessary for the Court to hold a trial in this matter, the parties believe that the Court need not set a firm trial date at the initial scheduling conference.

14. *Such other matters that the parties believe may be appropriate for inclusion in a scheduling order.*

The parties respectfully request a conference with the Court to discuss their differing positions on the scheduling issues after filing this document with the Court and before the entry of a scheduling order.

IV. PROPOSED SCHEDULING ORDER

The Plaintiff's Proposed Scheduling Order is attached as Exhibit 1. The Defendant's and Defendant Intervenors' Proposed Scheduling Order is attached as Exhibit 2.

Dated: November 28, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2006, I caused to be served a copy of the foregoing through the Court's ECF filing system to the following:

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