

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, *et al.*,

Plaintiffs,

v.

PATRICK LLOYD MCCRORY, in his official
capacity as the Governor of North Carolina, *et
al.*,

Defendants.

**OPPOSED JOINT MOTION OF
PLAINTIFFS TO MODIFY PRE-
TRIAL SCHEDULING ORDER**

Civil Action No. 1:13-CV-658

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, *et al.*,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, *et al.*,

Defendants.

Civil Action No. 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA, *et al.*,

Defendants.

Civil Action No. 1:13-CV-861

Plaintiffs hereby jointly move to modify the pre-trial scheduling order entered by this Court on Friday, November 7, 2014, to extend certain discovery deadlines currently in place. These modifications will allow all parties the time necessary to best develop evidence for the Court's consideration without compressing the Court's time to consider any dispositive motions that may be filed before trial.

In support of this motion, Plaintiffs show the following:

1. During a telephonic status conference with Magistrate Judge Peake on Friday, November 7, Plaintiffs proposed certain adjustments to then-pending unopposed modifications to the pre-trial scheduling order. All parties agreed to meet and confer on these proposed adjustments. The parties have been unable to reach agreement. Plaintiffs jointly proposed the following pre-trial schedule:

Prior Schedule	Existing Schedule (as of 11/7)	Plaintiffs' Proposed Schedule	Subject
12/12/14	1/16/15	2/13/15	Expert Reports
1/9/15	2/13/15	3/13/15	Rebuttal Expert Rpts
1/16/15	2/20/15	3/20/15	Sur-Rebuttal Rpts
2/2/15	3/6/15	4/3/15	Close of Discovery
2/12/15	3/13/15	4/13/15	Notice of Disp. Motions
3/4/15	4/1/15	4/17/15	Disp. Motions Due
4/3/15	5/1/15	5/8/15	Responses
4/17/15	5/15/15	5/15/15	Replies

2. The only change from the new proposed schedule orally communicated during the November 7, 2014, status conference is moving the close of discovery to April

3 instead of April 10. This adjustment allows for more time between the close of discovery and the filing of summary judgment motions. The new proposed schedule holds constant the last deadline in the summary judgment briefing schedule—May 15, 2015—so as to allow this Court ample time (indeed, the same time as set in the November 7 order) to consider those motions before trial.

3. As discussed during the November 7, 2014, status conference, it is likely that Plaintiffs' experts will need to review any legislative documents produced in light of Judge Peake's November 20, 2014, order granting plaintiffs access to certain categories of legislative documents. ECF No. 205, 1:13-cv-660. Defendants filed an objection to Judge Peake's initial order on the issue of legislative privilege to the District Court, and there is a possibility of additional objections to the latest order as well.

4. All parties and this Court would benefit from additional time before the deadline for expert reports and before the close of discovery. The Court's consideration of Plaintiffs' claims in this case will be aided by full discovery relating to the November 2014 elections. Moreover, much complex analysis remains to be done to determine how many North Carolina voters lack a qualifying state or federal form of photo identification that will be acceptable for voting under HB 589 starting in 2016. As an initial step, this process involves a matching analysis to determine how many North Carolina registered voters possess an unexpired North Carolina driver's license or North Carolina non-operator identification card that could be used for voting under HB 589. The State has not yet produced all data necessary to conduct this matching analysis. Once the State provides this data, the United States will undertake a process for matching North Carolina

voter registration data against this North Carolina driver license data, as well as matching the state data against federal data maintained by federal agencies that have information on the possession of federal forms of identification that are acceptable for voting under HB 589. Beyond conducting the matching analysis, experts for all parties will need time to review, analyze and write up the results of the data matching. These are complicated analyses that may well extend beyond the current January 16 expert report deadline. Given the upcoming holidays, all parties' experts will be forced to work intensively over those holidays, and even so, it would still be extremely difficult to meet the January 16 expert disclosure deadline. A February 13 deadline for expert reports would alleviate these concerns without compressing important pre-trial deadlines.

5. Plaintiffs have conferred with Defendants, who oppose the relief prayed for in this Motion. Defendants oppose any motion seeking to adjust the discovery schedule that does not also seek to adjust the trial and/or summary judgment schedule. Defendants have indicated that they will file a response to this motion.

6. Plaintiffs oppose any attempt to move the current trial calendar for this case (that begins in July 2015). Defendants have argued to this Court and represented in communications to Plaintiffs that because a decision by the trial court is only necessary by the time of the May 2016 primary, there is time to push back the trial for several months while still achieving this goal. That is incorrect for a number of reasons:

- a. First, per HB 589, the 2016 presidential preference primary will now occur on "the Tuesday after the first South Carolina presidential preference primary" if the primary in South Carolina is conducted prior to March 15 of

any presidential election year. An internet search reveals that, as of now, it appears that the South Carolina primary is on February 27, 2016, and therefore the NC presidential preference primary would occur on Tuesday, March 1. <http://abcnews.go.com/blogs/politics/2014/05/2016-presidential-primary-dates-taking-shape/>. Thus, the relevant date by which judicial resolution is required is not May 2016, but March 2016 (or possibly earlier, depending on when the South Carolina primary occurs).

- b. Second, regardless of the outcome at the trial level, this case will likely be appealed. Moving the trial date back at all seriously jeopardizes the ability of the appealing party to obtain timely appellate relief, especially given the *Purcell* concerns that apparently marked the appeals of the preliminary injunction. See, e.g., Order, 14-cv-1845, *League of Women Voters v. North Carolina* (4th Cir. Oct. 9, 2014) (recalling mandate following stay issued by U.S. Supreme Court). A trial during the July 2015 calendar will allow appellate courts to consider these cases without concerns about changing elections laws too close to an election.

7. On Friday, November 21, 2014, Judge Michael Morgan, the Wake County judge presiding over the state constitutional challenge to the voter identification requirement in House Bill 589 (*Currie, et al., v. North Carolina, et al.*, 13-CVS-1419) established a scheduling order in that matter. Judge Morgan set the matter for a one-week trial starting on July 13, 2015. He was fully aware that this case matter was on the July master calendar. He expressed confidence that both trials could be scheduled for the

summer, especially because of the 6-week timeframe of that July master calendar, and explicitly noted the need to get the case in front of him tried so that issue could be resolved well before the March 1 primary. He rejected Defendants' arguments that both cases could not be tried in July, and also rejected Defendants' proposed October trial date.

8. Furthermore, Defendants have indicated an intent to file a dispositive motion in that state court case, and a hearing on that motion has been scheduled for January 30, 2015.

9. The voters in North Carolina deserve clarity on the laws governing elections, especially before a presidential election where participation will be higher. Pushing the trial date back serves only the interests of the attorneys, not the interests of the parties, the voters in this state, or—by Defendants' counsel's own arguments made during the preliminary injunction proceedings—the interests of the State Board of Election Defendants, who would benefit from a timely resolution of this litigation so that they may prepare for the 2016 election.

10. Plaintiffs are submitting a proposed order to the Court contemporaneously with this Motion. Plaintiffs also request that they be permitted to reply to Defendants' response or to otherwise be heard on the issue of any modifications of the trial date before the Court renders a decision.

WHEREFORE, Plaintiffs respectfully pray that the Court grant Plaintiffs' joint motion to modify the pre-trial scheduling order as set forth above and as set forth in the accompanying proposed order.

Dated: November 24, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2014, I served Plaintiffs' Joint Motion to Modify Pre-Trial Scheduling Order with the Clerk of Court using the CM/ECF system in case numbers 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861, which on the same date sent notification of the filing to the following:

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