

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:13-CV-00660

LEAGUE OF WOMEN VOTERS OF)
NORTH CAROLINA, A. PHILIP)
RANDOLPH INSTITUTE, UNIFOUR)
ONESTOP COLLABORATIVE,)
COMMON CAUSE NORTH CAROLINA,)
GOLDIE WELLS, KAY BRANDON,)
OCTAVIA RAINEY, SARA STOHLER,)
and HUGH STOHLER,)

Plaintiffs,)

v.)

THE STATE OF NORTH CAROLINA,)
JOSHUA B. HOWARD in his official)
capacity as a member of the State Board of)
Elections, RHONDA K. AMOROSO in her)
official capacity as a member of the State)
Board of Elections, JOSHUA D.)
MALCOLM in his official capacity as a)
member of the State Board of Elections,)
PAUL J. FOLEY in his official capacity as)
a member of the State Board of Elections,)
MAJA KRICKER in her official capacity)
as a member of the State Board of)
Elections, and PATRICK L. MCCRORY in)
his official capacity as Governor of the)
State of North Carolina,)

Defendants.)

**DEFENDANTS' RULE 26(f)
REPORT AND PROPOSED
DISCOVERY PLAN**

INTRODUCTION

On July 26, 2013, the North Carolina General Assembly ratified House Bill (“H.B.”) 589, known as the Voter Information Verification Act (“VIVA”). This is one of three cases pending in this court challenging some of the portions of this act: *North*

Carolina State Conference of the NAACP, et al v. McCrory, et al., No. 1:13-cv-00658; *League of Women Voters of North Carolina, et al. v. The State of North Carolina, et al.*, No. 1:13-CV-00660; and *United States of America v. The State of North Carolina*, No. 1:13-CV-00861.

Defendants support a motion to consolidate these cases filed on November 26, 2013, by the Attorney General of the United States in *United States of America v. The State of North Carolina*. Defendants believe that all three cases should be consolidated for all purposes, including for purposes of establishing a discovery plan. Defendants are therefore filing an identical Rule 26(f) Report for all three cases.

1. Pursuant to Federal Rule of Civil Procedure 26(f), telephone conferences were held on November 15, 2013, and November 25, 2013. There are more than thirty attorneys listed as counsel in all three cases. Counsel for all of the parties in all three cases participated in these conference calls.

2. **Discovery Plan.** Defendants propose to the court the following discovery plan:

- a. Discovery will be needed on the Plaintiffs' claims and the defenses raised by the Defendants, in conformity with the limitations contained in Rule 26.
- b. Discovery shall be placed on a case-management track established in LR26.1. The Defendants believe that the appropriate plan for this case (with any modification as set out below) is that designated in LR26.1 as Exceptional.

- c. The date for the completion of all discovery (general and expert) is December 31, 2014, or 270 days after the date of any order of the Court on defendants' motion under Rule 12(c), F.R.Civ.P., (see Paragraph 3 below), whichever date is later.
- d. Initial Disclosures shall be due within 45 days of Court's approval/modification of this discovery plan.
- e. The maximum number of interrogatories by each party to another party will be twenty-five (25). Under this provision, defendants may serve each plaintiff with twenty-five interrogatories and the plaintiff group in each case may serve each defendant with twenty-five (25) interrogatories. The maximum number of requests for admission by each party group to the other party group in each case will be fifty (50). The maximum number of depositions (expert and general) will be fifty depositions total by the plaintiffs in all three cases cumulatively and fifty depositions total by the defendants in all three cases cumulatively. Each deposition, other than those of any plaintiff, will be limited to a maximum of eight (8) hours, unless extended by agreement of the parties.
- f. Reports from experts retained under Rule 26(a)(2) are due from plaintiffs on or before April 1, 2014, or 30 days after the date of any order of the Court on defendants' motion under Rule 12(c), F.R.Civ.P., (see Paragraph 3 below), whichever date is later. Reports from experts retained by defendants will be due on May 15, 2014, or 45 days after the date of any

order of the Court on defendants' motion under Rule 12(c), F.R.Civ.P., (see Paragraph 3 below), whichever date is later.

- g. Electronically stored information sought in discovery shall be produced in either hard or reasonably usable electronic form such as .tiff images, at the option of the producing party. No hard drives, email or other electronic databases shall be searched by electronic means until the parties have agreed upon search terms, which databases are to be searched, and the custodians whose files are to be searched, not to exceed five (5) custodians per party. The parties agree to continue their negotiations on an appropriate protective order regarding electronically stored information.
- h. All dispositive motions seeking summary judgment shall be filed within thirty (30) days after the close of discovery.
- i. The parties request that the final pretrial conference in this matter be set two (2) months prior to the trial date.

3. **Motions for Judgment on the Pleadings.** Pursuant to Rule 12(c), F.R.Civ.P., defendants anticipate filing a motion for judgment on the pleadings on or before January 10, 2014. Discovery shall be stayed pending the Court's ruling on defendants' Motion for Judgment on the Pleadings.

4. **Mediation.** Because this action presents constitutional challenges to enactments of the North Carolina General Assembly, it is not amenable to mediation, and mediation should therefore not be required in this case. Any potential settlement would likely require amendments to the challenged statutes, and it would be improper to

negotiate for or agree to any such amendments, the power to amend the challenged statutes being exclusively vested by the North Carolina Constitution in the North Carolina General Assembly.

5. **Deposition Schedule.** The parties have not agreed to a deposition schedule pending a ruling on the Motion to Consolidate filed by the Attorney General of the United States and pending a decision on defendants' motion under Rule 12(c), F.R.Civ.P. (see Paragraph 3 above).

6. **Other Items.**

a. All motions to join additional parties shall be filed by April 1, 2014.

b. All motions to amend the pleadings shall be filed by April 1, 2014.

After these dates, the court will consider, *inter alia*, whether the granting of leave would delay trial.

c. The parties have discussed special procedures for managing this case, including reference of the case to a magistrate judge on consent of the parties under 28 U.S.C. § 636(c) or appointment of a master and have determined that no such procedure should be utilized.

d. Trial of this action is expected to take approximately two (2) to three (3) weeks.

This the 5th day of December, 2013.

ROY COOPER
ATTORNEY GENERAL OF NORTH CAROLINA

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*appearing pursuant to Local Rule 83.1(d)

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CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' RULE 26(f) REPORT AND PROPOSED DISCOVERY PLAN** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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This, the 5th day of December, 2013.

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