

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.

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
AN EXTENSION OF TIME TO
FILE OPPOSITION BRIEFS AND
REPLY BRIEFS**

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. 13-cv-861

Plaintiffs jointly submit this response in opposition to Defendants' Motion for an Extension of Time to File Opposition Briefs and Reply Briefs, which Defendants filed on May 27, 2014 (ECF No. 127, Case No. 1:13-CV-658).

The scheduling of the preliminary injunction briefing — including the time between the opening brief and the time for Defendants to file their opposition — was set on December 13, 2013. After the Defendants recently appealed Magistrate Judge Peake's Order on discovery, the schedule was amended to accommodate the Defendants' appeal. Pursuant to the Court's April 29, 2014 Order, responses to preliminary motions are due on June 9, 2014, and replies are due June 23, 2104 (ECF No. 103, Case No. 1:13-CV-658).¹

Defendants now request a two week extension of time moving the deadline for their opposition briefs to the preliminary motions to June 23, 2014, and the deadline to file replies to July 7, 2014. Defendants request for an extra two weeks to respond to Plaintiffs' motion for preliminary injunction would impair the schedule set months ago, prejudice the Plaintiffs, and risk not providing the parties and the Court sufficient time in advance of the November election for the preliminary injunction hearing, an Order by the Court, and sufficient time to implement the Court's Order.

Defendants argue that an extension of time is warranted because of the amount of evidence that Plaintiffs submitted in support of the motion. Plaintiffs' legal argument in favor of the requested preliminary injunction is straightforward. The amount of evidence

¹ The preliminary motions are the United States' and private Plaintiffs' motions for preliminary injunction, and the State's motion for judgment on the pleadings. *See* ECF No. 106, 108, & 110 (Case No. 1:13-cv-658).

supporting the preliminary injunction is admittedly substantial. The evidence, however, should not be a surprise to Defendants. It consists of the legislative record, documents produced in discovery (and substantially documents produced by the Defendants), expert reports served on the Defendants on April 11 and sur-rebuttal expert reports on May 2, and declarations from fact witnesses.²

Defendants also raise the issue of expert depositions as a reason to delay the briefing. Any delay in the scheduling of expert depositions is a result of the Defendants' own making. Plaintiffs identified their experts and produced expert reports on April 11. Defendants deferred the meet-and-confer on scheduling depositions until May 15. Unfortunately, delay has been a constant issue with the Defendants in this case and should not be a basis to defer the schedule.

An adjustment of the current deadlines as Defendants propose would provide that Plaintiffs' reply brief be due on the Monday of the week when a hearing on this matter is currently envisioned, and would not allow sufficient time for the Court to review the

² As of May 23, 2014, Defendants notified Plaintiffs that they intend to depose former executive director of the State Board of Elections, Gary Bartlett, as well as Senator Dan Blue, Senator Earline Parmon, and Representative Rick Glazier. Notably, three of these fact witnesses (Bartlett, Blue, and Glazier) were explicitly identified in Plaintiffs' initial disclosures as individuals who were likely to have discoverable information and who Plaintiffs might use as witnesses in support of their claims. Plaintiffs also identified the category of current and former legislators as potential witnesses. Plaintiffs served their initial disclosures on Defendants on December 20, 2013, and Defendants have had an opportunity to depose these individuals throughout the discovery period. Hence, Plaintiffs believe that Defendants' scheduling of depositions should not warrant an extension of time.

reply papers or for the conducting of an evidentiary hearing that week.³ At the last hearing, the Court and the parties discussed an evidentiary hearing on the parties' preliminary motions beginning the week of July 7, 2014, with additional days (if necessary) during the week of July 14, 2014. As the Court is aware, Plaintiffs have jointly requested a five-day evidentiary hearing in order to present evidence in support of their motions for preliminary injunction. Plaintiffs have conferred with Defendants, who originally indicated that they believe a two-day hearing is sufficient, and subsequently informed Plaintiffs that they may want two days themselves to submit evidence.

During the May 9, 2014 hearing before the Court, Judge Schroeder indicated that his schedule would allow for a hearing beginning the week of July 7, and that his preference would be to complete a hearing before mid-July. Judge Schroeder further indicated that if the hearing did not take place during the weeks of July 7 or July 14, he might need to schedule the evidentiary hearing in August. Plaintiffs seek a July hearing to ensure that the Court has sufficient time to consider the evidence presented and to make a determination that would allow challenged provisions of House Bill 589 to be enjoined before the November 2014 general election, including the reduction of the early voting period in October 2014.

As noted in Defendants' motion, Plaintiffs offered and are amenable to a brief extension of time for the Defendants to file their opposition brief, provided it permits the

³ The modified schedule would also substantially shorten the period the Plaintiffs have to depose any declarants the Defendants may use in support of their opposition before the preliminary injunction hearing.

Court sufficient time to review the evidence presented before a July hearing and allows sufficient time for the implementation of the relief requested by Plaintiffs.

CONCLUSION

For all the foregoing reasons, the Court should deny Defendants' Motion for an Extension of Time to File Opposition Briefs and Reply Briefs. In the alternative, Plaintiffs are amenable to the Court granting Defendants' motion to the extent of providing a short expansion of the existing briefing schedule on the preliminary motions, so long as that extension applies across the board to the briefs filed by all parties, provides an opportunity for the filing of reply briefs, and does not preclude the scheduling of a five-day evidentiary hearing on the parties' preliminary motions beginning the week of July 7, 2014.

Dated: May 28, 2014

Respectfully submitted,

For the United States:

/s/ John Albert Russ IV

T. CHRISTIAN HERREN, JR.

JOHN A. RUSS IV

CATHERINE MEZA

DAVID G. COOPER

SPENCER R. FISHER

JENIGH J. GARRETT

ELIZABETH M. RYAN

Attorneys, Voting Section

Civil Rights Division

U.S. Department of Justice

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

Phone: (800) 253-3931

Email: john.russ@usdoj.gov

Email: catherine.meza@usdoj.gov

/s/ Gill P. Beck

GILL P. BECK

NCSB # 13175

Special Assistant United States Attorney

Office of the United States Attorney

United States Courthouse

100 Otis Street
Asheville, NC 28801
Phone: (828) 259-0645
Email: gill.beck@usdoj.gov

For the NAACP Plaintiffs:

/s/ Daniel T. Donovan

PENDA D. HAIR
EDWARD A HAILES, JR.
DENISE D. LIEBERMAN
DONITA JUDGE
CAITLIN SWAIN
Advancement Project
Suite 850
1220 L Street, N.W.
Washington, D.C. 20005
Phone: (202) 728-9557
Email: phair@advancementproject.org

IRVING JOYNER
NCSB # 7830
P.O. Box 374
Cary, NC 27512
Email: ijoyner@ncsu.edu

/s/ Adam Stein

ADAM STEIN
NCSB # 4145
Of Counsel
Tin Fulton Walker & Owen, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Phone: (919) 240-7089
Email: astein@tinfulton.com

THOMAS D. YANNUCCI
DANIEL T. DONOVAN
SUSAN M. DAVIES
BRIDGET K. O'CONNOR
K. WINN ALLEN
UZOMA NKWONTA
KIM RANCOUR

Kirkland & Ellis, LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Phone: (202) 879-5000
Email: tyannucci@kirkland.com

For the League of Women Voters Plaintiffs:

/s/ Allison J. Riggs

ANITA S. EARLS
ALLISON J. RIGGS
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
Phone: (919) 323-3380, x 115
Email: anita@southerncoalition.org

DALE HO
JULIE A. EBENSTEIN
ACLU Voting Rights Project
125 Broad Street
New York, NY 10004
Phone: (212) 549-2693
Email: dale.ho@aclu.org

LAUGHLIN MCDONALD
ACLU Voting Rights Project
2700 International Tower
229 Peachtree Street, N.E.
Atlanta, GA 30303
Phone: (404) 500-1235
Email: lmcdonald@aclu.org

CHRISTOPHER BROOK
ACLU of North Carolina Legal
Foundation
P.O. Box 28004
Raleigh, NC 27611-8004
Phone: (919) 834-3466
Email: cbrook@acluofnc.org

For the Duke Plaintiff-Intervenors

/s/ Marc E. Elias

MARC E. ELIAS

JOHN M. DEVANEY

ELIZABETH C. FROST

Perkins Coie LLP

700 Thirteenth St., NW., Suite 600

Washington, D.C. 20005-3960

Phone: (202) 654-6200

Email: melias@perkinscoie.com

Email: jdevaney@perkinscoie.com

Email: efrost@perkinscoie.com

/s/ Edwin M. Speas, Jr.

EDWIN M. SPEAS, JR.

JOHN W. O'HALE

CAROLINE P. MACKIE

Poyner Spruill LLP

301 Fayetteville St., Suite 1900

Raleigh, NC 27601

Phone: (919) 783-6400

Email: espeas@poynerspruill.com

Email: johale@poynerspruill.com

Email: cmackie@poynerspruill.com

CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on May 28, 2014, I electronically filed the foregoing **Plaintiffs' Opposition to Defendants' Motion for an Extension of Time to File Opposition Briefs and Reply Briefs**, using the CM/ECF system in case numbers 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861, which will send notification of such filing to all counsel of record.

/s/ John Albert Russ IV
JOHN ALBERT RUSS IV
U.S. Department of Justice
Civil Rights Division - Voting Section
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Phone: (800) 253-3931
Email: john.russ@usdoj.gov