

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

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

Plaintiffs, \*

vs. \*

Case No. 1:13CV658

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

Defendants. \*

\*\*\*\*\*  
LEAGUE OF WOMEN VOTERS OF NORTH \*  
CAROLINA, ET AL., \*

Plaintiffs, \*

vs. \*

Case No. 1:13CV660

STATE OF NORTH CAROLINA, et al., \*

Defendants. \*

\*\*\*\*\*  
UNITED STATES OF AMERICA, \*

Plaintiff, \*

vs. \*

Case No. 1:13CV861

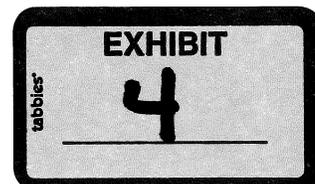
STATE OF NORTH CAROLINA, et al., \*

Defendants. \*

\*\*\*\*\*

TRANSCRIPT OF INITIAL PRETRIAL CONFERENCE  
HELD 12/12/13 IN WINSTON-SALEM, NORTH CAROLINA  
BEFORE THE HONORABLE JOI ELIZABETH PEAKE  
UNITED STATES MAGISTRATE JUDGE

Proceedings recorded by stenotype reporter.  
Transcript produced by Computer-Aided Transcription.



## 1 APPEARANCES:

2 For the Plaintiffs:

DANIEL T. DONOVAN, ESQUIRE  
Kirkland & Ellis, LLP  
655 15th Street, NW, Suite 1200  
Washington, DC 20005

3

4

5

ADAM STEIN, ESQUIRE  
Tin Fulton Walker & Owen, PLLC  
312 W. Franklin Street, Suite 2  
Chapel Hill, NC 27516

6

7

PENDA D. HAIR, ESQUIRE  
DENISE D. LIEBERMAN, ESQUIRE  
Advancement Project  
1220 L Street, NW, Suite 850  
Washington, DC 20005

8

9

10

ALLISON JEAN RIGGS, ESQUIRE  
Southern Coalition for Social  
Justice  
1415 W. Highway 54, Suite 101  
Durham, NC 27707

11

12

13

CHRISTOPHER A. BROOK, ESQUIRE  
American Civil Liberties Union of  
North Carolina  
Post Office Box 28004  
Raleigh, NC 27611-8004

14

15

16

CATHERINE MEZA, ESQUIRE  
JOHN A. RUSS, IV, ESQUIRE  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

17

18

19

GILL P. BECK, ESQUIRE  
Office of United States Attorney  
100 Otis Street  
Asheville, NC 28801

20

21

22

For Intervenor  
Plaintiffs:

JOHN W. O'HALE, ESQUIRE  
Poyner Spruill, LLP  
Post Office Box 1801  
Raleigh, NC 27602-1801

23

24

25

1 For the Defendants: ALEXANDER M. PETERS, ESQUIRE  
2 North Carolina Department of Justice  
3 Post Office Box 629  
4 Raleigh, NC 27602-0629

5 THOMAS A. FARR, ESQUIRE  
6 Ogletree Deakins Nash Smoak &  
7 Stewart, PC  
8 Post Office Box 31608  
9 Raleigh, NC 27622

10 KARL S. BOWERS, ESQUIRE  
11 Bowers Law Office, LLC  
12 Post Office Box 50549  
13 Columbia, SC 29250

14 Court Reporter: Lori Russell, RMR, CRR  
15 Post Office Box 20593  
16 Winston-Salem, North Carolina 27120  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

THE COURT: All right. I believe we have three cases on for initial pretrial conference. I'm going to ask the clerk to call those together.

LAW CLERK: The Court calls Case No. 1:13CV658, North Carolina State Conference of the NAACP, et al., versus McCrory, et al., for initial pretrial conference; 1:13CV660, League of Women Voters of North Carolina, et al., versus State of North Carolina, et al., for initial pretrial conference; and 1:13CV861, United States of America versus State of North Carolina, et al., for initial pretrial conference.

THE COURT: All right. Good morning. What I'm going to ask you to do, if you would, first is just to all please stand and identify yourselves and parties that you represent; and then for the court reporter's sake, if you could let us know who it is that is going to be speaking on behalf of the party you represent. That would be helpful as well.

Yes, sir.

MR. DONOVAN: Good morning, Your Honor. Daniel Donovan. I represent the North Carolina State Conference of the NAACP, along with the individual plaintiffs and organizations. That is the civil action 13CV658. I will be speaking for those plaintiffs, Your Honor.

1 THE COURT: All right. Thank you.

2 Yes, ma'am.

3 MS. RIGGS: Good morning, Your Honor. My name is  
4 Allison Riggs. I represent the League of Women Voters.  
5 With me is Christopher Brook from the ACLU of North Carolina  
6 and I'll be speaking for the League.

7 THE COURT: All right. Very good.

8 MS. MEZA: Good morning, Your Honor. Catherine  
9 Meza for the United States. I'm representing the United  
10 States in the case United States versus North Carolina.  
11 I'll be speaking on behalf of the United States.

12 THE COURT: Okay. Very good.

13 MR. DONOVAN: Can we bring a chair over?

14 THE COURT: That's what I was going to ask. Can  
15 we go ahead and take care of that?

16 (The court security officer complied with the request.)

17 MR. BECK: Also on behalf of the United States,  
18 Gill Beck from the United States Attorney's Office.

19 THE COURT: All right. Very good. Thank you.

20 Yes, sir.

21 MR. RUSS: Bert Russ from the U.S. Department of  
22 Justice on behalf of the United States.

23 MR. BROOK: Also on behalf of the League of Women  
24 Voters, Chris Brooks from the ACLU of North Carolina.

25 THE COURT: All right.

1 MS. HAIR: I am Penda Hair on behalf of the  
2 North Carolina NAACP.

3 THE COURT: All right.

4 MR. STEIN: Adam Stein, also for the NAACP  
5 plaintiff.

6 MS. LIEBERMAN: Denise Lieberman with the NAACP  
7 plaintiff.

8 THE COURT: All right.

9 MR. O'HALE: Good morning, Your Honor. John  
10 O'Hale on behalf of the proposed intervenors in the League  
11 of Women Voters case. Your Honor, that motion is not on for  
12 consideration today, but I'm present.

13 THE COURT: All right. What I'll ask you to do  
14 then is once we've completed all the proceedings on for  
15 today -- I don't believe that motion has been referred to  
16 me, but we can come back to where we might be with that  
17 before we conclude today. If you can remind me of that.

18 Yes, sir.

19 MR. PETERS: Good morning, Your Honor. I'm  
20 Alexander Peters with the North Carolina Attorney General's  
21 Office on behalf of the State of North Carolina, the  
22 North Carolina State Board of Elections; and in some of  
23 these cases, its executive director and members of the Board  
24 are the defendants. I'm here with Tom Farr of the Wake  
25 County Bar with the law firm of Ogletree Deakins. I'll be

1 speaking on behalf those defendants.

2 THE COURT: All right.

3 MR. BOWERS: Good morning, Your Honor. My name is  
4 Butch Bowers. I'm here on behalf of Governor McCrory and  
5 also his general counsel, Bob Stephens.

6 THE COURT: All right. Thank you.

7 MR. BOWERS: Thank you, Your Honor.

8 THE COURT: All right. I understand that there  
9 are individual Rule 26(f) reports. I have, of course,  
10 reviewed all of those, as well as the pleadings in the case  
11 and the motions to consolidate. What I'd like to get is  
12 just a general status report and overview from each of you  
13 first, and then we'll get some sense of how best to proceed  
14 today.

15 And since the defendants are in all of the cases, I'm  
16 going to start with you and then I'll go down the line as  
17 far as where all the plaintiffs stand. Yes, sir.

18 MR. PETERS: Sure, Your Honor. Perhaps you could  
19 tell me a little bit more of what you're looking for.

20 THE COURT: What I'm looking for is -- I've read  
21 everything, but I want just a general overview right now of  
22 where you are in terms of what you propose. Today is just a  
23 scheduling and administrative day in terms of what you're  
24 looking for and what you consider the options are that we  
25 might best consider.

1 MR. PETERS: Right. Thank you, Your Honor.

2 I think perhaps one of the major points at which there  
3 is disagreement between the parties obviously is the length  
4 of time we think discovery could take in this case. As you  
5 know from reading the report, we think a year is a  
6 reasonable time to expect discovery in a case such as this  
7 to take.

8 By my count, not including any proposed intervenors,  
9 there are 30 plaintiffs. There are over 30 lawyers on the  
10 other side. Depositions are going to be needed of all the  
11 plaintiffs. Looking at the reports, I believe we suggested  
12 and the United States Department of Justice suggested that  
13 each side have 50 depositions. I believe the NAACP and the  
14 League of Women Voters suggested 60 depositions per side.  
15 So either way that's a hundred or 120 depositions just right  
16 there that will need to happen over the course of discovery.

17 And discovery is obviously going to be needed. Clearly  
18 there is a great deal that the plaintiffs are going to want  
19 from the defendants and from other entities that are not the  
20 defendants themselves but that may have some association or  
21 some connection to the lawsuit. Notice has already been  
22 given of subpoenas against numerous legislators, as well as  
23 nonprofit think tank-type organizations that might have some  
24 information about this. The same thing is going to be  
25 happening, obviously, from our perspective. Each of the

1 plaintiffs needs to be deposed and there are going to be a  
2 lot of outside interests that need to be deposed. This is  
3 going to be a very data-intensive case.

4 When it gets right down to it, you know, at the core of  
5 much of what the plaintiffs are claiming is that their  
6 clients are disproportionately represented among the people  
7 who do not have voter IDs or may be disproportionately  
8 represented among the people who do not have voter IDs or do  
9 not have identification that would qualify, among the people  
10 who use the first part of one-stop absentee voting, among  
11 the people who use provisional balloting, that sort of  
12 thing.

13 And, frankly, there's going to need to be a lot of  
14 discovery on not just the plaintiffs, but also the bigger  
15 picture of elections. "Get out the vote" efforts organized  
16 by numerous organizations, other things going on that may,  
17 we believe, shed a bigger picture or a more complete picture  
18 on, if there is a disproportionate representation in those  
19 categories, why that is and whether it has anything to do  
20 with what the law is aimed at or whether it is infringed in  
21 any way upon the law -- by the law or whether it is  
22 something that other forces have fostered, such as target to  
23 "get out the vote" efforts in that early part.

24 THE COURT: All right.

25 MR. PETERS: So I think that's where we see the

1 biggest --

2 THE COURT: And then as to this question of  
3 consolidation, just briefly what's your position?

4 MR. PETERS: We agree with the United States that  
5 the cases should be consolidated for all purposes. We see  
6 no reason not to do so. We recognize that one case has one  
7 claim that's not in the other cases, that one case is not  
8 challenging the voter ID, but otherwise -- and that one case  
9 does not raise claims under the Fifteenth Amendment, but  
10 otherwise they're identical. Otherwise, even with those  
11 things, they're all going to be looking at the same set of  
12 facts, the same legal argument. So we see no reason not to  
13 consolidate them.

14 THE COURT: Okay. Mr. Bowers, did you have  
15 anything to add for the defendants on that?

16 MR. BOWERS: No, Your Honor. And Mr. Peters will  
17 be speaking for all of us collectively on this side.

18 THE COURT: All right. Thank you.

19 MR. BOWERS: Thank you.

20 THE COURT: All right. Yes, sir.

21 MR. DONOVAN: Good morning, Your Honor. May I  
22 approach? I have some handouts to guide our discussion  
23 today.

24 THE COURT: Yes. Hand them to the clerk, please.

25 (Documents handed to the Court by Mr. Donovan.)

1 MR. DONOVAN: Good morning, Your Honor. Daniel  
2 Donovan for the NAACP.

3 I would like to introduce just before I begin --  
4 Reverend Barber is with us, Your Honor. He is the president  
5 of the NAACP here in North Carolina, which is the oldest  
6 civil rights organization not only in this state but  
7 throughout the country.

8 We thank you for your time this morning.

9 Your Honor, if we could, I would like to address three  
10 points and would be happy to readjust them how you want.  
11 But first, in order to set the schedule, I think it is  
12 important to summarize, somewhat in response to the brief  
13 that was filed on the schedule, what our case is and how we  
14 got here. I'll do it briefly.

15 THE COURT: Okay.

16 MR. DONOVAN: Second will be our proposed schedule  
17 and then, third, why the defendants' schedule and even the  
18 Department of Justice's don't fit this case.

19 THE COURT: All right. And I am looking just for  
20 an overview now.

21 MR. DONOVAN: Sure.

22 THE COURT: Of course, mainly we're just  
23 scheduling today. So I'll let you present what you need to  
24 present, but that's really what I'm interested in.

25 MR. DONOVAN: I'll get right to it, but let me

1 give you a little background, Judge, because I think it's  
2 critical.

3 Here this case is unlike a lot of civil cases I know we  
4 all have, where it's about who owes who money. This case,  
5 as you've read, is about the fundamental right to vote and  
6 the right to vote is important for all citizens, I know, but  
7 it's especially important here for African Americans due to  
8 the historic and sometimes brutal obstacles they've had to  
9 overcome to secure the vote. So those struggles are  
10 recognized and addressed in the Voting Rights Act which is  
11 at issue in our case.

12 So this case is going to have to answer whether this  
13 new law, HB 589, violates the Voting Rights Act and it also  
14 needs to be addressed -- and this is critical, Judge --  
15 before and well before the November 2014 elections that are  
16 coming up. They have to be because if someone is denied the  
17 vote to right -- excuse me -- the right to vote it's lost.  
18 It's irreparably lost. So people that say, well, let's just  
19 wait, you can't do that. The law is settled that that's  
20 irreparable. So this is not just setting the schedule.  
21 It's going to determine whether people actually have the  
22 full right to vote.

23 So in turning to our schedule, Your Honor, and why it's  
24 so important, I would ask you to turn to Slide 3 where we  
25 laid out kind of how we got here; and that is, this law was

1 passed and signed by Governor McCrory on August 12th, 2013.  
2 I am on Slide 3. That same day the NAACP of North Carolina  
3 filed suit. That's the first date. And it seeks to enjoin  
4 certain challenged provisions. And since that date, the  
5 defendants have had the opportunity -- they've answered.  
6 We've had our conferences and the NAACP plaintiffs, along  
7 with the League of Women Voters, we started discovery under  
8 the rules, as permitted. We sent out our document requests.  
9 In addition, we served third-party subpoenas, as Mr. Peters  
10 has said.

11 We moved the case forward, but the clock is ticking.  
12 The November 2014 elections are coming and we need action  
13 before that because, as you see from Slide 3, it's not like  
14 we could just wait to the eve of the elections. The State  
15 is going to have to take actions. Most importantly, what  
16 we're all here for is the voters. The voters need to  
17 understand what the rules of the road are going to be to  
18 vote.

19 So if you look at this schedule in order to determine  
20 and resolve these claims, they need to be addressed in  
21 advance -- and if you'll turn to Slide 4 -- which is exactly  
22 why we sketched out when trial should begin, which is June  
23 23rd, 2014. What that does is lets this Court not only have  
24 the trial but make the decision, which takes time, as I  
25 know, and then it allows the State to implement those

1 rulings. We can't do this in September or October or else  
2 we're already into those dates.

3 So the practical issue here really for Your Honor and  
4 then Judge Schroeder is are you going to have a full  
5 preliminary injunction, okay, where you're going to hear the  
6 same issues, you're going to hear the same testimony, you're  
7 going to have to rule on very closely analogous standards  
8 and write written opinions, only to do it again a few months  
9 later.

10 Now, the defendants and the Department of Justice have  
11 said, Well, we just can't do that. And I want to suggest  
12 that that's not true and I want to show you why that's not  
13 true. If you turn -- Slide 5, Your Honor, is -- just for  
14 your convenience, is the proposed order that we gave you.  
15 But I want to turn to Slide 6 because -- this is critical  
16 because this is our schedule. Here, Your Honor, you're not  
17 acting alone. Other Courts have dealt with these kind of  
18 schedules, as have many of the parties and lawyers here.

19 Now, I'm pointing first to a pending case that's down  
20 in federal court in Texas. This is the Veasey case, Your  
21 Honor. In there the time for fact discovery -- we didn't  
22 intend it this way. We intended it to be close. But it is  
23 exactly what the federal judge there put into place and, in  
24 fact, here we have more time for expert discovery. Look at  
25 the Florida early voting rights case. There they had much

1 less fact discovery and less expert discovery. And then in  
2 the South Carolina photo ID case, it was even less.

3 So, Your Honor, if you're looking for precedent, other  
4 Courts that have done it. The Florida and South Carolina  
5 cases are done. The Texas case, which is doing it, that's  
6 what they've done. They've done what we're asking for.

7 And the defendants have provided you no precedent, no  
8 examples of their super-extended schedule. They suggest  
9 nine months, Your Honor, but let's put this in context for  
10 the State. We all know this law was passed one month after  
11 the United States Supreme Court case. The defendants are  
12 now asking for nine months due to the discovery on what did  
13 the legislator have.

14 And I understand they want some other discovery. I  
15 sent them a letter over a week ago saying we will make our  
16 plaintiffs available, many who have traveled here. They can  
17 get deposed. They can do it this month. They can do it  
18 next month. We'll get them discovery in a timely manner.

19 The State has all the photo ID, has all the -- they  
20 have all the data. And, in fact, what I showed you on Slide  
21 8 is, in fact, the State Board of Elections -- we're not  
22 starting fresh. They've run this analysis Mr. Peters talked  
23 about and, in fact, 34 percent of African Americans who are  
24 registered in this state don't have the proper ID and that's  
25 compared against 22 percent of the population.

1           So one of the factors you and Judge Schroeder are going  
2 to have to look at, the State Board of Elections has already  
3 looked at this and showed there was a disproportionate  
4 impact on that, Your Honor. They don't need more time. And  
5 with respect to our people, we'll make them available. I've  
6 already sent the letter. Obviously, I'm not going to get in  
7 the way of discovery when I'm asking for this schedule.

8           Now, I think I heard Mr. Peters say, jeez, there's a  
9 lot of lawyers on this side. I just want to be clear. The  
10 State knew there was going to be litigation over this law.  
11 As the press reports have said, they've had both public and  
12 private counsel. In fact, they had Mr. Bowers, Mr. Farr.  
13 Mr. Farr's firm is a big firm. They've been retained by the  
14 State. They have over 700 lawyers. They're able to move  
15 fast, I'm sure. So they have more than sufficient resources  
16 to move forward.

17           So then, Your Honor, you also have the Department of  
18 Justice's schedule, which is kind of a hybrid, and it just  
19 doesn't work in this case and let me just explain briefly  
20 why. First, it's not what was accepted by the judge in  
21 Texas, not that that binds you, but I think that's another  
22 Court that looked at the same issue. The same schedule by  
23 the DOJ was suggested. It wasn't accepted. And why not?  
24 Well, it's the very problem I raised before. Your Honor,  
25 you and Judge Schroeder are going to have this PI that's, in

1 effect, a full trial, only to have to rule on that record  
2 and then rule on a record three to six months later. That  
3 makes no sense for us or you.

4 THE COURT: Well, does that help, though, balance  
5 the -- getting something resolved prior to the November  
6 election, to the extent we can, without cutting off your  
7 ability and the United States' ability to undertake even  
8 greater discovery to the extent you might need to on some  
9 points?

10 MR. DONOVAN: Yeah, I don't think it does and  
11 here's why. First is -- that was going to be my second  
12 point. In order to get to the preliminary injunction  
13 hearing, you're going to have to review this law as it was  
14 passed and not in pieces because, we submit, both  
15 individually the challenged provision and as a whole  
16 discriminate and cannot stand. So it can't be that, well,  
17 jeez, let's do some of the discovery. We have to do all the  
18 discovery and we can. So if we do that, then the question  
19 is -- well, the parties are ready. Do you kind of then do  
20 the preliminary injunction, then do the trial? That makes  
21 no sense.

22 And I'd also suggest that we should try. You should  
23 set this schedule. I understand you may decide later, well,  
24 jeez, everybody can't do it. But we filed four months ago.  
25 I don't think it is going to be as hard as it is. They have

1 experts. We have experts. People do this. They're doing  
2 it in the Texas case. They're doing it here. We can do  
3 this, Your Honor.

4 And most importantly, I think really, in thinking of  
5 the voters, you want the full trial, Judge Schroeder should  
6 want the full trial because I know -- for two reasons. One  
7 is, look, you want all the evidence. We want to give you  
8 all the evidence. We want you to decide on the full record.  
9 And I think if you set this preliminary injunction what  
10 we're going to end up doing is saying, well, you don't  
11 really need that discovery or we don't need to prioritize.  
12 In my position, you have to look at the whole law. You have  
13 to look at how it was passed, why it was passed, and all the  
14 data. I'm not sure there's going to be much different data,  
15 much different witnesses I'm going to present to you and  
16 Judge Schroeder than I would at trial. I really don't.

17 THE COURT: Well, I guess the concern is whether  
18 it's cutting off your ability to do that by not letting you  
19 have the chance to come back again later after the  
20 preliminary injunction proceeding when you have additional  
21 time to make that further inquiry.

22 MR. DONOVAN: But that decision shouldn't be made  
23 today because the parties can do it and I'm giving you  
24 precedent. If it comes to pass, I understand, the parties  
25 can come to you three, four months from now. I understand

1 we may still have the same fight. I understand. But we  
2 shouldn't kind of set up today to do a preliminary  
3 injunction, which is -- you know, that's not normally what  
4 Courts want to resolve important historic issues like this.  
5 You would rather do it on a full record. My suggestion is  
6 to do what Texas did. Let's try it. Let's set it to do  
7 that. If it can't be done, so be it.

8 But one example, Judge, which has happened, is I've  
9 been asking the defendants to serve discovery, when do they  
10 want to depose my people, let's get going; and they just  
11 haven't. So that's going to happen more and more. If you  
12 set these deadlines, people will move, people will act. We  
13 really need that because here I need the data. I have some  
14 of the data. I need to take the depositions. I'm going to  
15 do that, along with others and along with the defendants.  
16 But if we set it for a preliminary injunction, I'm afraid  
17 I'm not even going to have all the evidence I'm entitled to  
18 because of the way we set it up.

19 And I think that's the best way to go, Your Honor,  
20 because I've given you precedent that it can be done. It's  
21 been done in other cases. We should certainly try to do it  
22 here on such an important issue like voting rights, Your  
23 Honor.

24 THE COURT: All right. Thank you.

25 MR. DONOVAN: Thank you.

1 Oh, on consolidation, Your Honor, just briefly.  
2 There's really no reason to consolidate these cases for all  
3 purposes. All the parties agree for discovery purposes.  
4 And I -- I read their reply brief and, you know, they list  
5 the factors you know well, but here there's no risk of  
6 inconsistent adjudication. They're all before you and Judge  
7 Schroeder, all the cases. There's not going to be any  
8 double doing of depositions because we've already agreed  
9 we're going to coordinate discovery. It's these very kinds  
10 of issues -- I don't think it's critical, but I think it's  
11 one of these things of why decide that today when you can do  
12 it for discovery purposes, which we all agree we have to  
13 start.

14 Thank you, Your Honor.

15 THE COURT: All right. Thank you.

16 Yes, ma'am.

17 MS. RIGGS: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MS. RIGGS: Allison Riggs for the League of Women  
20 Voters.

21 Echoing the NAACP, the League believes that the  
22 importance of the interests involved in this case justify an  
23 expedited schedule and prompt resolution. When the way we  
24 conduct elections is in dispute, the very legitimacy of  
25 government is at stake; and with the enacted challenged law,

1 the voting experience for every voter in the state is going  
2 to be different.

3 The League submitted a different schedule than did the  
4 NAACP. We don't object to the NAACP's schedule and would be  
5 prepared to go to trial on their schedule as well. We  
6 wanted to offer the Court an example of the flexibility it  
7 would have in still getting us to resolution before the 2014  
8 elections. Echoing again what the NAACP said and what we  
9 have in our 26(f) report, it's not uncommon for voting  
10 litigation to move at a rapid pace.

11 And if I can approach, there's one other case I would  
12 like to bring to your attention.

13 THE COURT: Yes, ma'am.

14 (Documents handed to counsel and the Court by  
15 Ms. Riggs.)

16 MS. RIGGS: That's *Perez v. Perry*, a Section 2  
17 redistricting case in the Western District of Texas. Your  
18 Honor, in that case, the first complaint was filed on May  
19 9th. It's not a complete docket sheet that I've included.  
20 There's a thousand docket entries, but I took us up to trial  
21 in that case. The first complaint was filed on May 9th. We  
22 went to trial the day after Labor Day. There were seven or  
23 eight different plaintiff groups. Texas is a much larger  
24 state. It doesn't keep voter registration data as  
25 meticulously and as detailed as does the State of

1 North Carolina and we got it done. It's -- as Mr. Donovan  
2 mentioned, when lawyers have deadlines, we run, not jog.  
3 We're more than capable of doing it. We believe we can put  
4 on our case and make our case in the time that we suggested.

5 I also -- I don't want to diminish the significance of  
6 the fact that my clients don't have a voter ID claim in this  
7 case; and to the extent we get set on a schedule because of  
8 the discovery that folks claim is needed for voter ID, that  
9 could prove to be very prejudicial to my clients, who are  
10 challenging that the -- certain elements of the law that are  
11 going into effect in 2014 and seek resolution on that.

12 And that's part of the reason why the preliminary  
13 injunction schedule that's been proposed by the Department  
14 of Justice isn't sufficient either. That doesn't provide  
15 full resolution for voters across the state. They don't  
16 have a final answer on what is the law and what isn't the  
17 law, and we believe it can lead to confusion. The Corpus  
18 Christi Court in *Veasey versus Perry* was presented with a  
19 similar preliminary injunction schedule and just didn't find  
20 that sufficient to address the needs of voters in that  
21 state.

22 On consolidation, again, our main problem with  
23 consolidation is being bootstrapped into a schedule that  
24 doesn't serve our client's best interests; and we do  
25 believe, contrary to some of the briefing on that, that

1 the factors that would weigh in favor of denying  
2 consolidation -- full consolidation are present for the  
3 League of Women Voters, which is the prejudice to the  
4 parties that I mentioned, but also the additional time  
5 requirements that are unnecessary for the League in their  
6 case.

7 But the truth being -- truth being told, there is no  
8 material difference in what we proposed jointly with the  
9 NAACP over the next few months than what the Department or  
10 the State proposed. So we believe that it would be  
11 appropriate just for consolidation on discovery purposes  
12 only.

13 THE COURT: Okay. Thank you.

14 Yes, ma'am.

15 MS. MEZA: Good morning, Your Honor. Catherine  
16 Meza for the United States. We wholeheartedly agree with  
17 Mr. Donovan and Ms. Riggs regarding the fact that there are  
18 fundamental rights at issue here and also that all of the  
19 provisions that are challenged should be tried together,  
20 which is why we feel that our schedule is the most ideal in  
21 order to do that.

22 Our two-phase schedule includes an initial seven-month  
23 discovery period, including five months of fact discovery  
24 and two months of expert discovery. We envision that this  
25 first period would include significant facts and expert

1 discovery on all the claims, except the photo ID database  
2 matching component which the United States plans to  
3 undertake.

4 The database matching analyses that we plan to  
5 undertake will entail matching records from the State of  
6 South Carolina's (sic) voter registration database and their  
7 Division of Motor Vehicle's database in order to determine  
8 the number of North Carolina voters who currently do not  
9 have DMV issued identification. We also intend to undertake  
10 the same analysis of matching voter registration records  
11 with federal databases that include information on  
12 possessors of military IDs, passports, and veteran IDs. And  
13 given our past experience, this is intensive data-matching  
14 analysis that is going to require -- is very time-consuming,  
15 is going to require some time, which is why we've decided --  
16 we proposed a second phase of discovery, which is when the  
17 bulk of this data-matching analysis will take place and also  
18 --

19 THE COURT: Now, even if you started that now  
20 along with other discovery, you don't believe that you could  
21 get that completed during an abbreviated or expedited  
22 discovery period?

23 MS. MEZA: No, Your Honor, for several reasons.  
24 There are -- there will be privacy and national security  
25 issues that will need to be resolved with respect to the

1 federal databases. Also, we have prior experience and,  
2 again, this is extensive data analysis that will need to be  
3 undertaken.

4 Further, with respect to the second phase of discovery  
5 we proposed, it will allow us to take into account voter  
6 registration information from the 2014 election cycle. The  
7 voter ID provision does not go into effect until 2016, so it  
8 will allow the Court to consider evidence on voter ID that  
9 is closer to the time when the provision will be  
10 implemented.

11 Furthermore, with respect to the other schedules that  
12 both Mr. Donovan and Ms. Riggs pointed to in our other  
13 cases, the current schedule in the Texas voter ID case,  
14 which the United States is also involved in, there are very  
15 different circumstances here and there. First of all, the  
16 Texas ID case or the Texas ID law has been in place since  
17 June of this year. It has already been applied to elections  
18 in 2013. Further, the United States and Texas both proposed  
19 an extended schedule for some of these reasons. Also, that  
20 case only involves an ID provision. We have five or more  
21 provisions that are being challenged here and we'll need  
22 extensive discovery. Additionally, while we are going to  
23 endeavor to abide by the Court's schedule in that matter, we  
24 already have grave concerns about being able to meet some of  
25 those deadlines.

1           With respect to the Florida and South Carolina cases  
2 that were mentioned, those were Section 5 matters. The  
3 State in both of those cases wanted an expedited schedule.  
4 They had the burden and they wanted an expedited schedule.  
5 In the Florida case, for instance, the five covered counties  
6 in that case would not -- could not implement the law or the  
7 provisions at issue until the Court made a determination.  
8 That's not the case here.

9           Additionally, both the Texas ID case and the Texas  
10 redistricting case that Ms. Riggs mentioned have been tried  
11 before in the Section 5 context and the Section 2 context,  
12 and here they're being retried in the Section 2 context. So  
13 there's some of that record that the parties there can rely  
14 on.

15           We also believe that our schedule will provide for the  
16 complexity of the discovery in these matters without  
17 bifurcating any issue or claim. We believe that it's  
18 important here that all the provisions be looked at  
19 together, both in terms of effects and purpose.

20           With respect to effects, we believe that the provisions  
21 will have a cumulative negative impact on minority voters'  
22 ability to participate in the electoral process equally; and  
23 the totality of the circumstances requires the Courts to  
24 look at all these provisions together and their combined --

25           THE COURT: Let me ask you about that because

1 certainly one of the possibilities that comes to mind is  
2 bifurcating this in terms of either which sections of the  
3 House Bill 589 you're challenging or in terms of whether  
4 it's effects versus purpose. Are all the plaintiffs -- and  
5 I'll give everyone a chance. But as far as you know, all  
6 the plaintiffs are in agreement you don't want to bifurcate  
7 in either of those ways?

8 MS. MEZA: Well, I will speak on behalf of the  
9 United States. We absolutely will oppose bifurcation. We  
10 believe that both with respect to purpose and effect these  
11 provisions should be looked at together both in terms of the  
12 totality of the circumstances and in purpose when looking at  
13 the history and the sequence of events here and other  
14 factors that need to be considered.

15 THE COURT: And in terms of the different parts of  
16 the bill that are being challenged as well? You wouldn't  
17 seek to bifurcate, say, Part 2 separately from the other  
18 parts; is that correct?

19 MS. MEZA: No, Your Honor. It's absolutely  
20 important that the ID provision that does go into effect  
21 later be considered in part -- both in effects and purpose  
22 with the other provisions. For instance, as to purpose  
23 evidence, the ID provision or the bill that was introduced,  
24 considered, and passed by the House initially only included  
25 the ID provision. So that's an integral part of the purpose

1 evidence here.

2           Moreover, in terms of consolidation, currently pending  
3 before the Court is the United States' motion for  
4 consolidation for all purposes. We don't agree that an  
5 approach where that is being -- that is -- that was moved  
6 for by the other plaintiff is ideal here. We need to know  
7 the trajectory of this case and key dates like pretrial and  
8 other dispositive motions.

9           THE COURT: Well, I will tell you it may really be  
10 a distinction without a difference given the way the  
11 calendar works for the district in the sense that once  
12 you're combined for discovery and everything is captioned  
13 together the cases still have their separate case numbers,  
14 but they're all captioned, as far as filings and pleadings  
15 and order, together. They'll be on the same trial calendar  
16 with the same district judge. We just wouldn't be making a  
17 decision now how that district judge will choose to hear  
18 those claims. That seems to be beyond what I would need to  
19 decide today for the district judge who is actually going to  
20 try the case or how the summary judgment briefing might be  
21 set up.

22           Again, that's the kind of thing that it would be on the  
23 same schedule, but in terms of page limits and who presents  
24 consolidated briefs together, those are all things that  
25 would be subject to presentation for the district judge that

1 I don't think we need to resolve today in order to achieve  
2 the purpose of consolidation and preventing some  
3 inconsistent deadlines or ultimately decisions.

4 But if there's some piece I'm missing about that, then  
5 I'll hear from you in terms of what it might be that you're  
6 trying to address with that.

7 MS. MEZA: Well, we agree that specific deadlines  
8 might be able to be resolved later, but in terms of the  
9 trajectory of the case and the scope of discovery, whether  
10 we are going to be preparing for a preliminary injunction,  
11 as proposed by the United States, is very different -- in  
12 the summer of 2014 is very different than being prepared to  
13 present trial at that same time.

14 THE COURT: Of course. We'll make the decision  
15 for all of the cases what the discovery schedule is going to  
16 be, but in terms of then when we get to all those dates, how  
17 the summary judgment briefing is going to look or how the  
18 bench trial is going to be set up, those things seem to be  
19 beyond what we would need to decide today. But if all the  
20 cases are consolidated for discovery, then they would all be  
21 on the same schedule for whatever we decide today in terms  
22 of is it going to be a July trial or is it going to be a  
23 July preliminary injunction, which seems to be the primary  
24 difference.

25 That's what I'm trying to get at in terms of the

1 consolidation that you're looking for and what the  
2 difference is between what the other plaintiffs are asking  
3 for, what the distinction is that maybe I'm missing in terms  
4 of what it is that you're looking for.

5 MS. MEZA: No, Your Honor, I think we just would  
6 like to know as soon as possible when we should be preparing  
7 for either a preliminary injunction or a trial. But  
8 nonetheless, I agree that's the case.

9 THE COURT: Okay. All right. Anything else that  
10 you wanted to mention at this point?

11 MS. MEZA: No. We just again will reiterate the  
12 fact that we think our case -- the proposed schedule from  
13 the United States is ideal to deal with the complex  
14 discovery issues in this matter.

15 Thank you.

16 THE COURT: All right. Thank you.

17 All right. What I'm going to do then, Mr. Peters, I'll  
18 let you sort of respond briefly and then -- I think I  
19 understand the general approaches. What I can do is maybe  
20 provide some additional information to you all in terms of  
21 what the actual deadlines would have to be under the two  
22 potential options that we've got and then it might be  
23 something where it's worthwhile to even give you some time  
24 to -- just today a few minutes, in terms of a recess, to  
25 think through that and make a decision about, if you can,

1 what you all can work out. But I'll hear from you if  
2 there's something else you need to respond to.

3 MR. PETERS: Thank you, Your Honor. I will keep  
4 it very brief.

5 One thing that I neglected to mention earlier -- it's  
6 in our Rule 26 report, so I know you read it in there, but I  
7 wanted to mention it as well. We do intend to file a Rule  
8 12(c) motion in early January and we believe that will very  
9 possibly have an effect on what issues there are to have  
10 discovery on.

11 THE COURT: Well -- and I understand that and that  
12 might help you as far as when I go through what this might  
13 look like, but I wouldn't anticipate staying discovery while  
14 a motion for judgment on the pleadings is pending and so you  
15 understand you would still be subject to discovery during  
16 any of that period.

17 MR. PETERS: Right. I just wanted to make sure I  
18 mentioned that that was part of the mix.

19 THE COURT: All right.

20 MR. PETERS: Just a few things I do want to  
21 respond to. The counsel for the NAACP seems to be taking a  
22 position that fits in two of the cases that he has cited,  
23 but does not fit here. As Ms. Meza pointed out, the cases  
24 that they've put forward to show how quickly something can  
25 be done are one-issue cases. Two of them were Section 5

1 cases where it was the State that had sued the United States  
2 Department of Justice; and in those two cases, as I  
3 understand it, a preclearance submission had already been  
4 prepared. So the record was already pretty much together.

5 That's not the case here, despite what counsel would  
6 suggest by saying that the legislature already had all the  
7 information in front of it and so forth. It is not correct  
8 that the State Board of Elections had a report that showed  
9 voters did not match up. It said it had a report that said  
10 there were voters they were unable to match at that time and  
11 there could be a variety of reasons for that. So that's one  
12 of the areas we think clearly a great deal more needs to be  
13 done on both sides to understand what's going on there.

14 I also do want to mention it is correct that they --  
15 counsel for the NAACP offered to make plaintiffs available  
16 in December. I believe that offer was made a week or two  
17 ago to make plaintiffs available in December and they said  
18 they haven't heard from us. We said in the conferences that  
19 we held by telephone that Mr. Farr and I and one other  
20 attorney who is working on this case -- one of the other  
21 four attorneys working on these three cases on our side, we  
22 had a brief due in the North Carolina Supreme Court earlier  
23 this week on North Carolina's redistricting plans and we  
24 have an oral argument in the Supreme Court in early January.  
25 I'm not trying to whine or anything like that, but simply we

1 did explain to counsel that, aside from holidays of  
2 Thanksgiving and Christmas, to say they could make the  
3 plaintiffs available to us in December simply was not  
4 realistic from our -- from our position of what we were able  
5 to do.

6 And, finally, I just want to say -- I want to make it  
7 clear on behalf of the State that we certainly take very  
8 seriously when the right to vote may be infringed upon. We  
9 take that very seriously and we don't want to give any  
10 impression that is not the case in the schedule that we are  
11 suggesting. We also take very seriously that when people of  
12 North Carolina, acting through their elected  
13 representatives, enact laws they're entitled to have those  
14 laws carried out, unless they are found to be  
15 unconstitutional. That being the case, I think the  
16 people -- the State is equally entitled to full and complete  
17 discovery in this case.

18 THE COURT: Let me ask you in some ways it seems  
19 that your proposal is not that different than the United  
20 States' proposal in that there would be a period for  
21 preliminary motions: your motion for judgment on the  
22 pleadings, their motion for preliminary injunction. There  
23 would be an anticipated expedited early discovery period  
24 that we would anticipate that the State and defendants would  
25 cooperate in so that discovery was provided prior to the

1 preliminary injunction, but then the ultimate determination  
2 would be made later. That would give you the option to  
3 decide when, if you wanted to do expedited discovery prior  
4 to the preliminary injunction, you could do that, but you  
5 wouldn't be obligated to do that. It seems that those  
6 things are analogous, but I want to explore that.

7 MR. PETERS: I think that's right, Your Honor.  
8 Obviously, the schedule we proposed is a little bit longer  
9 than Justice's. But you're right. That's really where I  
10 was headed with this is this is the reason that the Federal  
11 Rules of Civil Procedure allow for preliminary injunctions.  
12 This is the reason for it, so that if there is a risk that  
13 rights could be infringed upon before the case can be fully  
14 developed and heard the Court has the opportunity to do  
15 something about it in the meantime. That's what preliminary  
16 injunction is for and we think it much more appropriate,  
17 rather than trying to get everything done at breakneck  
18 speed, to try to -- to bear in mind that's what a  
19 preliminary injunction is for. And if there is concern  
20 about what might happen in the 2014 elections, the  
21 plaintiffs have the ability to seek a preliminary injunction  
22 for that.

23 THE COURT: All right. Thank you.

24 I'm going to give you all an opportunity to make any  
25 other statements you want to, but I think at this point it

1 might be helpful if I give you a little bit of general  
2 information about what these things might look like. It  
3 seems like we've got two options. I had also considered a  
4 third option that involves bifurcated trials and discovery.  
5 It doesn't sound like anyone is asking for or in favor of  
6 that, so I can go ahead and not even add that to the mix.

7         If we have an early trial option, you're talking about  
8 being on the July 2014 Master Calendar for this court.  
9 Discovery would have to be completed before dispositive  
10 motions were filed. So, realistically, the date for the  
11 close of all discovery, including expert discovery, would  
12 have to be April 1st. Dispositive motions would be due  
13 April 15th, responses April 30th, and replies May 14th. I  
14 would anticipate that any expert reports and rebuttals and  
15 surrebuttals would be during March. That would be a March  
16 disclosure of reports, March 14th rebuttal reports, March 21  
17 any surrebuttals, to the extent you all agree to that.  
18 There would not be a period then for preliminary motions and  
19 any legal issues that would otherwise be appropriate for  
20 motion for judgment on the pleadings could effectively be  
21 rolled into the summary judgment briefing given the schedule  
22 that we would be on. Amendments to the pleadings would have  
23 to happen by January 1st and initial disclosures immediately  
24 within the next week or so.

25         Now, that gets you backwards working from the July

1 Master Calendar. That is a very tight schedule and I don't  
2 know that it's possible to get a hundred depositions and the  
3 extent of discovery that you're asking for in before April  
4 1st, but that's what it would have to involve. And my  
5 concern about that schedule is that it could ultimately end  
6 up prejudicing the plaintiffs if there is not a sufficient  
7 basis of evidence that's been presented given the  
8 abbreviated time. So that's my concern with that schedule.  
9 The alternative schedule -- and it is -- it's a possibility,  
10 but that's -- I have some concern about it.

11 The alternative schedule tracks to some extent the plan  
12 that the United States and the defendants would have  
13 proposed. It would be a later trial, but an option for  
14 preliminary motions to resolve the legal issues and, to some  
15 extent, the preliminary injunction would involve factual  
16 issues as well, to the extent we could. That would also  
17 involve -- I don't see any reason not to do immediate  
18 initial disclosures, maybe a little more time for amendments  
19 to the pleadings, but we would still need those cleaned up  
20 by February 1st. The preliminary motions would be a motion  
21 for judgment on the pleadings by defendants or motion --  
22 motion for preliminary injunction by plaintiffs and I think  
23 that the schedule we could follow there would be motions  
24 filed by May 5th, 2014.

25 MR. PETERS: I'm sorry, Your Honor.

1 THE COURT: May 5th.

2 MR. PETERS: Thank you.

3 THE COURT: Responses May 26th, replies June 9th,  
4 and then that hearing also set for roughly the time period  
5 of the July Master Calendar, which could be July or August,  
6 but should at least provide the time period that you're  
7 asking for prior to the November election. Although I would  
8 not intend to specifically phase the discovery in terms of  
9 topics or parts of the bill or types of discovery so much as  
10 just to acknowledge with everybody that we're anticipating  
11 some expedited discovery. Defendants might not choose to  
12 take that discovery early, but that the plaintiffs will and  
13 that those would be 30-day turnarounds or 3-week notices for  
14 depositions. There wouldn't be an anticipation of extending  
15 those time periods out in order to get all the information  
16 to the plaintiffs that they needed for the preliminary  
17 injunction proceeding.

18 If you anticipate experts, I can give you a schedule  
19 for experts that you intend to use at preliminary  
20 injunction. That would be April 1st for expert reports,  
21 rebuttals April 14th, and surrebuttals April 21st. I don't  
22 think anything about those expert reports would preclude you  
23 from addressing the same issues again in expert reports  
24 prior to trial. Those would just be for purposes of  
25 preliminary injunction. They wouldn't be topically limited.

1 They would just be those used for preliminary injunction  
2 purposes. Regular expert report periods would apply.

3 For trial, if we did that, we could use a May 1st,  
4 2015, close of all discovery and that would by general  
5 ordinary operation put you on the October 2015 Master  
6 Calendar. That would be expert reports not related to  
7 preliminary injunction.

8 Is there a concern with that?

9 MR. FARR: I'm sorry, Your Honor.

10 THE COURT: Okay. All right. I thought maybe I  
11 misspoke or you had a question.

12 MR. FARR: No, no, Your Honor. What you're saying  
13 sounds very logical to me. I just have some concerns about  
14 the initial disclosures and also the time needed to respond  
15 to some of these discovery requests.

16 THE COURT: All right. I'll hear from you on  
17 that. I just wanted to make sure there was not a problem in  
18 terms of --

19 MR. FARR: I apologize, Your Honor.

20 THE COURT: -- how we're setting this out.

21 So at this point we've got a -- it would be a May 1st,  
22 2015, close of all discovery and expert reports under  
23 that -- and these would be, again, not limited to anything  
24 that was presented at the preliminary injunction proceeding,  
25 but just generally for trial. March 13th, 2015, would be

1 the deadline for expert reports; April 3rd, 2015, rebuttal;  
2 and April 17, 2015, surrebuttal. And then with a May 1st,  
3 2015, close of discovery, you would have full periods for  
4 dispositive motions, which would be June 1, 2015, motions  
5 for summary judgment; July 1, 2015, responses; July 15,  
6 2015, replies.

7 That would give you I think the full period, even  
8 beyond, to some extent, what defendants were asking for,  
9 within the range of what the United States was asking for in  
10 terms of the full period of discovery, but an opportunity to  
11 resolve the motion for judgment on the pleadings and a  
12 motion for preliminary injunction, with a hearing on that as  
13 fully as you want to present it, in the July time period  
14 prior to the November elections.

15 It's my hope that the plaintiffs at least can all agree  
16 on what your collective preference would be among those. It  
17 certainly is harder for me to make a decision when we've  
18 consolidated the plaintiffs, but I don't have a consensus as  
19 to what it is that the plaintiffs need. And I also don't  
20 know if this additional information may affect, to some  
21 extent, where you all come down on that.

22 So if it would be helpful, I can hear from all of you  
23 again or I can take a 15-minute recess. I can let you all  
24 talk to one another; and if there are minor adjustments that  
25 would be helpful or that would make a difference, we can

1 certainly consider that in terms of which option we would  
2 choose, which option all of you have a preference for, and  
3 then how the details will work.

4 We will also still need to visit the details of number  
5 of interrogatories, requests for admissions, depositions,  
6 those types of things, but we'll come back with that.

7 So I'm going to ask you just a very limited question of  
8 whether it would be helpful to take a 15-minute recess to  
9 talk through these. Yes?

10 MR. DONOVAN: That makes sense, Your Honor.

11 THE COURT: That will be helpful?

12 MR. PETERS: Sure.

13 THE COURT: All right. So what we'll do is let's  
14 take a 15-minute recess and then we'll reconvene to see  
15 where we are at that point and then finish that process.

16 (A morning recess was taken from 11:08 a.m. until 11:25  
17 a.m.; all parties present.)

18 THE COURT: All right. Mr. Donovan, I'll start  
19 with you then.

20 MR. DONOVAN: Thank you, Your Honor. Daniel  
21 Donovan from the NAACP.

22 Your Honor, after conferring, both the NAACP and the  
23 League of Women Voters, we would proceed with the early  
24 trial, what you called Option 1.

25 A couple points I want to make there is -- one is

1 Mr. Peters and others have referred to the cases that I  
2 cited which have schedules either the same as ours or  
3 shorter as saying: But wait. Those are cases where the  
4 State bore the burden and the State wanted to make changes  
5 and there the State wanted to move quickly.

6 In what world, Judge, is it fair in which the State,  
7 when they want to make the change, can move quickly; but  
8 when plaintiffs feel their right to vote is impinged, the  
9 State can argue, well, let's go slow? I think they made our  
10 very point in that argument and I'd ask you again to look at  
11 Slide 6 to show not only this is doable, but these,  
12 including the South Carolina case, were much shorter.

13 The other point is I heard about 60 depositions. A lot  
14 of these are going to be short depositions. They're  
15 plaintiff depositions or records depositions. There are not  
16 going to be lots and lots of long depositions. I just want  
17 to make sure -- when people start talking big numbers,  
18 that's not necessarily true and they're not all the same.

19 THE COURT: Here's my concern. I'll come back to  
20 this again with Option 1. You talked about shooting for  
21 this date; and then if ultimately it wasn't possible, you  
22 might have to push it back. The problem is then you're not  
23 going to have an option of having this decided in any  
24 fashion before the November election. If you want -- if you  
25 want an option of having it decided before the November

1 election, then there's not room to move the discovery date  
2 under Option 1.

3 MR. DONOVAN: I'm not sure that's true. Maybe  
4 you'll tell me it's not possible. But first of all, we're  
5 going to make this schedule and we can. I've conferred with  
6 my cocounsel. But even if you did, Judge, it basically just  
7 makes everything you had proposed for the PI hearing -- it's  
8 exactly the same. You would just convert at that point the  
9 expert reports, the discovery -- everything becomes the PI  
10 hearing.

11 THE COURT: Well, that's what I'm not inclined to  
12 switch midstream.

13 MR. DONOVAN: No, no, I understand that. All I'm  
14 saying is I think you would have that -- I -- what I don't  
15 necessarily agree with is I don't think it forecloses it. I  
16 don't think we're going to need it, okay. I understand we  
17 bear the burden.

18 THE COURT: And I just want to make sure you  
19 understand that if -- and I don't know that I'm going to  
20 choose Option 1, but if we did and then if there's a problem  
21 and there's not enough discovery, I'm going to take that as  
22 you having foreclosed the possibility, as far as I'm  
23 concerned, of having something decided before the November  
24 election. So that is the -- that's the decision. If you  
25 want to have that option without moving the -- with the

1 discovery, it's got to be done by April 1st if we're under  
2 Option 1. If you want the option of having additional  
3 discovery or needing additional time, then we're going to  
4 have to go with Option 2, but we are going to have to decide  
5 that today.

6 MR. DONOVAN: Sure. The NAACP and League of Women  
7 Voters want Option 1 and understand what you explained.

8 THE COURT: Okay. All right.

9 Yes, ma'am.

10 MS. RIGGS: Allison Riggs for the League, Your  
11 Honor.

12 We stand here today certain that we will not be  
13 prejudicing our case to go on this schedule. The amount of  
14 evidence that we would have to put on in a PI motion is the  
15 same as what we need to make our case. We just want to make  
16 our case. We think that voters in North Carolina are  
17 already confused by the scope of the changes to election  
18 laws in this state; and to have a PI on some issues and not  
19 others, it's just going to lend to further confusion.

20 Your Honor, also, Florida was not a single-issue case.  
21 There was early voting. There was intracounty moving for a  
22 portion of the litigation. It was third-party registration  
23 regulations.

24 There is nothing more complicated in this world than  
25 Texas redistricting. We did not -- just to clarify, we

1 didn't have the benefit of a Section 5 trial first. We went  
2 to trial on the Section 2 issues on Texas redistricting from  
3 May to trial in September without the benefit. That record  
4 was rolled in to the Section 5 case and helped speed up the  
5 Section 5 case.

6 But we are all professionals. We know how to do this  
7 quickly. It's what election law litigation requires. The  
8 voters deserve certainty. The counsel for League of Women  
9 Voters is involved in the same North Carolina redistricting  
10 litigation. We have deadlines, too. We wouldn't be  
11 bringing these cases and prosecuting them the way that we  
12 are if we weren't certain we could do justice to all of  
13 them. So we very strongly support Option 1.

14 THE COURT: All right.

15 Yes, ma'am.

16 MS. MEZA: Catherine Meza for the United States.

17 We're amenable to the second option you presented.  
18 It's closest to our schedule and would also allow for a full  
19 record before the Court and for purposes of appeal.

20 And we just wanted to note that we would be open to an  
21 earlier trial date under the second option, if that's a  
22 possibility.

23 THE COURT: We would have to move all of the dates  
24 back accordingly, and I don't know that we could build in  
25 that time and still have the discovery period that you had

1 otherwise requested.

2 MS. MEZA: Okay. Well, that -- if it's a  
3 possibility. But nonetheless, we are in favor of the second  
4 option.

5 THE COURT: All right. Again -- and I'll hear  
6 from you in just a minute -- my concern when we took the  
7 recess was the plaintiffs having different positions and  
8 that's really creating the biggest issue for me in terms of  
9 making sure that I've got all of the plaintiffs sufficiently  
10 protected and then taking into account what it is the  
11 defendants need as well. Is there not a possibility that  
12 you all can work out together a united position on this?

13 MS. MEZA: Well, as far as the United States is  
14 concerned, based on our past experience and also on the  
15 discovery we intend on pursuing in this matter, we just  
16 don't feel that the April 1st discovery close date would be  
17 sufficient time to put together a full record.

18 THE COURT: All right.

19 Yes, sir.

20 MR. PETERS: Thank you, Your Honor.

21 On behalf of the defendants, we are also amenable to  
22 the second option you outlined. We think that is, as  
23 Ms. Meza suggests, the realistic one. We simply don't think  
24 three-plus months of discovery is realistic, not given the  
25 depositions that need to be taken. And they might be short.

1 They might not. The depositions of the plaintiffs will be  
2 taken and they might not be short.

3 The -- given the -- what Ms. Meza outlined earlier  
4 about the work that needs to be done with data and how long  
5 that will take -- and, frankly, Your Honor, I think also,  
6 since the first schedule you outlined does not provide for  
7 any preliminary motions of any kind -- and whether they want  
8 to pursue a preliminary injunction or not, we believe we  
9 have a right to pursue preliminary motions as well in the  
10 form of a Rule 12(c) motion.

11 THE COURT: It won't necessarily preclude it. I  
12 think just as a matter of timing it would be being briefed  
13 essentially at the same time as the motions for summary  
14 judgment, just as a practical matter.

15 MR. PETERS: Right, which I understand, but it  
16 would be being briefed and so forth at the same time that  
17 discovery that we think is unrealistic to try to undertake  
18 in three months would be undertaken.

19 I do feel the need to point out, since counsel has said  
20 that we've made the point for them by saying when the State  
21 wants more time it's fine, when the State doesn't want more  
22 time, you know, we say a longer schedule is necessary, I am  
23 not the one who said that the State was the one who proposed  
24 those schedules in the other cases. That was counsel for  
25 the United States, not me.

1 MR. DONOVAN: I apologize.

2 MR. PETERS: So we would advocate the second  
3 option. I would note we would feel a little bit of need  
4 probably to tweak a little bit immediate disclosures we  
5 think are not realistic on our end. We would probably need  
6 until early January sometime to do that. And we do know  
7 that discovery that has already been served -- we're going  
8 to be needing to ask for some extensions there because  
9 they're coming at a time where a lot of stuff has to be  
10 gathered from lots of people, many of whom are out of place  
11 this time of year.

12 THE COURT: Well, even if I do ultimately go with  
13 Option 2, you understand as part of that I am anticipating  
14 that there is going to be this expedited push of discovery  
15 early so that plaintiffs have what they need for a  
16 preliminary injunction.

17 MR. PETERS: We do understand that, Your Honor.

18 THE COURT: And so while I don't know how great a  
19 tweak you anticipate, there isn't a lot of room for  
20 extending those things given the short deadlines for  
21 preliminary injunction.

22 MR. PETERS: We do understand that, Your Honor.  
23 And I think the tweak we were anticipating is basically,  
24 from what I was understanding, to be from right before the  
25 holidays to right after the holidays on that.

1 THE COURT: All right. All right.

2 Anything else the plaintiffs wish to be heard on any of  
3 those matters?

4 All right. At this point what I'm going to do is I'm  
5 going to adopt Option 2 based on my concern that there will  
6 be insufficient time for the plaintiffs to get the discovery  
7 that they need in order to make a full presentation. My  
8 concerns are getting this matter resolved, to the extent we  
9 can, prior to the November 2014 election and I believe the  
10 best way we can do that is by allowing for motions for  
11 preliminary injunction or for judgment on the pleadings.  
12 That would still preserve the possibilities for plaintiffs  
13 to undertake additional discovery and for defendants to  
14 complete their discovery, so that there's no question that a  
15 complete record has been prepared and created by the time we  
16 get to summary judgment and trial. So that's the reason why  
17 I'm going to do that.

18 I went over those dates with you. I think you have  
19 them. Do we need to go over them again?

20 MR. DONOVAN: Well, I think we do. Daniel  
21 Donovan for the NAACP. Your Honor, even under that, I think  
22 we would because especially -- critically is, I've been  
23 informed -- I'm just not sure if the July Master Calendar  
24 means July or August and I don't know if it does. If we  
25 could make sure it's early July just so there would be the

1 time to get this into effect. I'm not sure you could do  
2 that.

3 THE COURT: The way that it would go is going to  
4 be on the July Master Calendar and then it would be  
5 ultimately up to the district judge to decide when and how  
6 to schedule that. I think that would all be part of what  
7 you could address in terms of what the trial -- these are  
8 all bench trials; is that correct?

9 MR. DONOVAN: Yes, Your Honor.

10 THE COURT: Okay. How the bench trials are set  
11 up.

12 That actually does raise the issue of consolidation.  
13 Everyone seems to be in agreement as to consolidation for  
14 discovery. So I'll grant the motions to consolidate for  
15 purposes of discovery and for purposes of scheduling, but  
16 I'm going to leave for the district judge to decide how  
17 summary judgment should be briefed and how the bench trial  
18 should be structured. I don't think that's something we  
19 need to decide today.

20 MR. DONOVAN: The second point, Your Honor, is  
21 after the preliminary injunction we think -- the schedule  
22 you talked about afterwards going into 2015 --

23 THE COURT: Yes, sir.

24 MR. DONOVAN: -- the dates that were -- I'm not  
25 sure where they came off of, but no one has suggested --

1 even the defendant suggested discovery should close at the  
2 end of 2014 and even the United States had proposed a trial  
3 earlier in the year than late October.

4 THE COURT: Well, I think the United States' trial  
5 date didn't allow sufficient time from their close of  
6 discovery date, so we would have to back up their close of  
7 discovery date in order to get an earlier trial date. Now,  
8 whether we do that -- I anticipate that there might be a  
9 period after November when this discovery might become  
10 speeded back up and how long you need for that to happen  
11 prior to your close of discovery -- I mean, I'll hear from  
12 you on that and from the United States as well.

13 MR. DONOVAN: Well, this raises my very concern  
14 hearing later, well, let's hold off on that discovery,  
15 because the only thing the United States really was asking  
16 for more time is for their own people. They're already  
17 getting this information for the Texas case. They're going  
18 to have it. We're all going to have it. I'm saying the  
19 only two things that were requested was data from 2014 and  
20 database matching, actually the work that experts do.

21 So I guess there's two points there. One is I don't  
22 think it needs to be that extended and I'm worried about  
23 pushing this trial to October of 2015; and then number two  
24 is -- I just want to kind of put a little mark here because  
25 I think we're going to be back on this --

1 THE COURT: Okay.

2 MR. DONOVAN: -- is that this can't be that this  
3 other discovery gets extended, is weighted. I agree with  
4 what Ms. Riggs said. I think it's a good point. What we're  
5 going to present is substantially going to be the same and I  
6 am concerned we're going to hear from the defense "Well, you  
7 don't need that" or "It's going to take us more time." I  
8 understand. I'm just -- it's a concern I want to raise.

9 THE COURT: My intent would be that you pursue  
10 whatever discovery it is you want to pursue. They  
11 understand we're all under an expedited response in the  
12 sense that there's not going to be routine extensions of  
13 discovery periods, and they're going to be obligated to  
14 respond and to appear for the depositions when you notice  
15 them so that you have what you can get. They can choose not  
16 to take discovery during this early period. I don't see any  
17 reason why that would make a difference in terms of what you  
18 choose to present for a preliminary injunction. If they  
19 want to wait until later to notice depositions of the  
20 plaintiffs or to otherwise pursue written discovery, then  
21 they could do that. I'm also not limiting by topic or  
22 otherwise what it is that you choose to pursue.

23 It's -- it's really more the concern that there might  
24 be other evidence out there certainly that the United States  
25 anticipates needing and that there might be evidence that

1 you are ultimately not quite able to get in time that I want  
2 you to be able to have the time to come back even if you  
3 don't have it at the preliminary injunction hearing. So I  
4 understand and noted those points.

5 As to your first point, we can back up all those dates  
6 90 days to get onto the July trial calendar. That's the way  
7 it would have to work. Is that your proposal?

8 MR. DONOVAN: Yeah, it is. Also, I think the  
9 point would be since the -- the supplementing, basically, of  
10 discovery would be -- and supplementing of expert reports --  
11 because we are going to present testimony on all these  
12 issues. I don't think the times that the United States  
13 suggested need to be so long and I think -- since we're kind  
14 of going off the normal tracks anyhow, I don't know if we  
15 need to kind of conform each of those tracks, Your Honor,  
16 would be my suggestion. Maybe we could modify those.

17 THE COURT: Well, what I would intend to do since,  
18 at least in my view, the expert reports for preliminary  
19 injunction, you can choose to use those, but you're not  
20 bound to them.

21 MR. DONOVAN: We can supplement, right.

22 THE COURT: So in whatever way you want to do  
23 that. Or if there are new experts for either side that you  
24 didn't use and you have new expert reports for trial.  
25 The -- essentially all of those deadlines would come back 90

1 days, which would then allow us to go to the July trial  
2 calendar. It may, though, shorten your discovery period.

3 And I'll hear from the United States, if they think  
4 that that would be sufficient on that, but -- first, did you  
5 have anything else you wanted to add?

6 MS. RIGGS: Just we support moving the October  
7 trial back to July.

8 THE COURT: All right.

9 Yes, ma'am.

10 MS. MEZA: Yes, Your Honor, we certainly would be  
11 amenable to moving the trial calendar back to have a July  
12 trial.

13 THE COURT: So instead of, though, May 1st, then  
14 you would have a February 1st, 2015, close of discovery.  
15 Would you be comfortable with that?

16 MS. MEZA: I'm sorry, Your Honor. Could you  
17 repeat that?

18 THE COURT: We're moving it back to February 1st  
19 for close of discovery.

20 MS. MEZA: So this would be February 1st, 2015?

21 THE COURT: Right.

22 MS. MEZA: That should be fine. We're fine with  
23 that.

24 THE COURT: All right. And I asked because I  
25 believe that you had asked for a longer period. Your close

1 of discovery, I believe, was May 1st, 2015. So we would be  
2 backing that up three months. Are you in agreement with  
3 that?

4 MS. MEZA: Can I respectfully request a moment to  
5 confer with my colleague for a moment?

6 THE COURT: Yes.

7 MS. MEZA: Thank you.

8 (Pause in the proceedings.)

9 MS. MEZA: Thank you, Your Honor. Yes, we would  
10 be amenable to moving the time back to then.

11 THE COURT: All right. And, Mr. Donovan, that  
12 would be your request then?

13 MR. DONOVAN: It would be, Your Honor.

14 THE COURT: All right. Anything else you wanted  
15 to add as far as anything else on Option 2 from the United  
16 States?

17 MS. MEZA: No, Your Honor. I just wanted to note  
18 in terms of interrogatories, depositions, and requests for  
19 admissions, we are in full agreement with the NAACP's  
20 proposal, as reflected in our report.

21 THE COURT: All right. And I will take that up  
22 next. We'll go through it to the extent there is any  
23 disagreement on that.

24 First, let me ask the State is there anything as far as  
25 objections to Option 2? You had mentioned initial

1 disclosures. I'll take that up. Also, I'll hear from you  
2 as to moving all those deadlines back to a February 1st,  
3 2015, close of discovery.

4 MR. PETERS: Right. We would be amenable to  
5 moving everything, as I understand it, 90 days.

6 THE COURT: It would. I will do a written order  
7 after this hearing to set out all those dates. I'm not  
8 going to try and calculate the 90 days right now.  
9 Essentially, it will get us 90 days earlier. That would  
10 allow us to put the case for trial on the July 2015 Master  
11 Calendar. For preliminary injunction and any other  
12 preliminary motions for judgment on the pleadings, it would  
13 be on the July 2014 calendar.

14 MR. PETERS: And just for clarity, Your Honor, I  
15 know you mentioned showing up for depositions when they are  
16 noticed, which obviously we will do, but I'm assuming you're  
17 saying that anticipating counsel confer with each other to  
18 set those depositions.

19 THE COURT: Absolutely. That's part of the local  
20 rules and I'm assuming that everyone is working together on  
21 that.

22 MR. DONOVAN: We will, Your Honor.

23 THE COURT: What I would not want, though, is to  
24 have that stretched out --

25 MR. PETERS: Right, certainly.

1 THE COURT: -- unnecessarily or beyond the time  
2 periods we're anticipating here given the preliminary  
3 injunction.

4 MR. PETERS: I understand.

5 THE COURT: Now, as to the issues you raised with  
6 initial disclosures, wouldn't initial disclosures already  
7 have been due anyway under Rule 26 at this point? We're 14  
8 days out from your conference. Is that correct?

9 MR. PETERS: We are 14 days out from the  
10 conference, Your Honor.

11 THE COURT: Well, that's my concern with  
12 stretching that out an additional period. I'll hear from  
13 you if you want to give me a specific --

14 MR. PETERS: Can I have one minute?

15 (Pause in the proceedings.)

16 MR. PETERS: Your Honor, I think it's simply a  
17 matter of -- aside from the other obligations that we have  
18 had recently, our anticipation was that the initial  
19 disclosure date would be part of the package that was  
20 included coming out of the conference today and so trying to  
21 pull them together immediately might be a challenge. At the  
22 most, what we would have to do there is do our best first  
23 shot and then amend them down the road.

24 THE COURT: All right. Well, tell me what you  
25 think you can do as far as a best first-shot date and then

1 an amended still within a pretty tight period of time.

2 MR. PETERS: I would say probably the best first  
3 shot would be -- today is the 12th -- a week from tomorrow  
4 and then --

5 THE COURT: So that would be the 20th.

6 MR. PETERS: And then updated immediately after  
7 the New Year.

8 THE COURT: All right. And so then December 20,  
9 with updates -- that would be January 6th? January 10th?

10 MR. PETERS: That's fine.

11 THE COURT: And I realize those are things that  
12 are pushing you. I'm doing that intentionally in the sense  
13 that I do take seriously the sense that -- while I'm giving  
14 you Option 2, I'm also very sensitive to making sure all  
15 this discovery that plaintiffs are looking for happens in an  
16 expedited time frame.

17 MR. PETERS: And we understand that.

18 MR. FARR: Your Honor, do you mind if I ask for  
19 one favor?

20 THE COURT: Yes, sir.

21 MR. FARR: We have oral argument in the  
22 redistricting case. I don't know if you follow that or not,  
23 but I believe that's on January 6th. Could we have until  
24 January 7th?

25 THE COURT: Let's see. January 6th is a Monday.

1 We can -- why don't we make it the 8th.

2 MR. FARR: Thank you very much.

3 THE COURT: All right. Mr. Donovan, I'll hear  
4 from you as to those specific issues in terms of the initial  
5 disclosures, things we just said.

6 MR. DONOVAN: No surprise. I'm not sure, when  
7 these lawyers have been hired for months -- I mean, I get a  
8 little bit of the administrative, but we're ready to move.  
9 We can do our initial disclosures tomorrow because we've  
10 been going under the rules, assuming they're due. So,  
11 obviously, if they have to supplement, they have to  
12 supplement. I do object and I think this is the beginning  
13 of what we're going to hear over and over is "We have other  
14 cases," "More things are more important." And this is our  
15 very concern is that the initial disclosures -- we filed  
16 this lawsuit four months ago. They should know who their  
17 witnesses are at a pretty good level. I understand you have  
18 got to supplement every once in a while. So we object, Your  
19 Honor.

20 THE COURT: All right. Well, what I'm going to do  
21 is I'm going to give them until December 20th to make those  
22 disclosures. I'm going to expect that those are relatively  
23 complete in the sense that those deadlines have come and  
24 there shouldn't be a surprise about that. On the other  
25 hand, if there is a need to supplement, that should happen

1 very quickly too and that would be by January 8th. What I'm  
2 not anticipating is that you wait until January 8th to do  
3 the bulk of the disclosures.

4 MR. PETERS: Certainly.

5 THE COURT: All right. Then as far as -- and for  
6 plaintiffs' sake, I'm going to impose the same deadlines. I  
7 understand that you have the ability or the intent to do  
8 that sooner, but your deadlines will be the same. So  
9 initial disclosures would be December 20th; and then if  
10 there is a need to make any updates to that, that would be  
11 by January the 8th.

12 As far as amendments to the pleadings, I would assume  
13 that the pleadings are otherwise relatively well settled. I  
14 know that there are issues potentially with motions to  
15 intervene that are not necessarily fully briefed or referred  
16 to me yet at this point, but for the parties who are here as  
17 far as amendments to the pleadings, is there any  
18 anticipation that you need a date for amending the pleadings  
19 by?

20 MR. PETERS: No, Your Honor.

21 MR. DONOVAN: I don't believe so, Your Honor. If  
22 we do, it will be modest. You may want to set a date, but  
23 we sitting here don't anticipate any.

24 THE COURT: All right. Then I'm going to set that  
25 January 8th date for amendments. After that it would just

1 be under the ordinary standards, but showing that wouldn't  
2 otherwise delay the proceedings.

3 As far as preliminary motions, the motion for judgment  
4 on the pleadings or motions for preliminary injunction would  
5 be due May 5th, 2014, responses May 26th, and replies June  
6 the 9th.

7 And I'll -- I know defendants, you had -- Mr. Peters  
8 indicated that you might file the motion for judgment on the  
9 pleadings earlier. I don't think it would preclude you from  
10 doing so, but to the extent you want to stay on the briefing  
11 schedule that's otherwise set, that would be the one that  
12 would apply.

13 As far as expert disclosures, any experts that you  
14 would anticipate wanting to present or rely on as part of  
15 the preliminary injunction proceedings, I think that would  
16 certainly just be a matter of electing to do that if you  
17 wanted to do that. I can give you deadlines for that to the  
18 extent that you do. That would be a report -- disclosing  
19 the reports by April 1st. If you want to provide rebuttal  
20 reports, that would be by April 14th and then any  
21 surrebuttals by April 21st.

22 And then as far as trial experts, I'll reset those  
23 dates along the lines we had spoken of but 90 days earlier,  
24 with a February 1, 2015, close of all discovery,  
25 anticipating that it could then be on the July 2015 Master

1 Calendar.

2 As far as the schedule goes, are there any questions or  
3 other particular matters that we need to take up? I will  
4 move on to the issue of number of depositions and that type  
5 of matter. But before we do that, as far as the schedule  
6 goes, anything else that we need to take up today?

7 MS. RIGGS: Your Honor, Allison Riggs for the  
8 League.

9 Did I understand correctly that you and the Court would  
10 be willing to allow a lengthy hearing on the preliminary  
11 injunction?

12 THE COURT: I can't make that decision for Judge  
13 Schroeder, so I think it would be up to him. What he'll  
14 have is all of the briefing that you've presented, as well  
15 as the briefing on the motion for the judgment on the  
16 pleadings. It's set so that it could be included as part of  
17 that Master Calendar in July 2005 (sic). So to the extent  
18 that Judge Schroeder believes that a hearing is appropriate  
19 or would otherwise want that as part of his decision, then  
20 that would be part of when it could be set; and I would  
21 anticipate that that would be when it would be in the scope  
22 of what we're discussing here today. As far as what exactly  
23 he decides that it needs to look like, we can't decide that  
24 today.

25 MS. RIGGS: Thank you, Your Honor.

1 THE COURT: All right. Anything else?

2 All right. As far as -- I would note just generally  
3 there were references to protective orders and agreements as  
4 to electronically stored information. Does anybody want to  
5 update me as to the status of those?

6 MR. FARR: I would like to respond to that, Your  
7 Honor. We have got some proposals from the Department of  
8 Justice. We think those proposals will form the framework  
9 for an agreement. We just haven't responded and we hope to  
10 respond next week.

11 THE COURT: All right. So as to those, if it's an  
12 agreement as to electronic discovery that you all can just  
13 agree to yourselves, you can do that. If you need an order  
14 from the Court, you can file that as a motion for approval.

15 As to the protective order, the same thing. You can  
16 agree to that yourselves. If there's something you need a  
17 Court order for, then you can bring that to the Court for  
18 approval. I will tell you that any protective order you  
19 have you shouldn't include prospective sealing provisions.  
20 Anything that you intend to file with the Court would need  
21 to be filed publicly or with its own separate motion to  
22 seal. So I'll go ahead and forecast that for you. But  
23 otherwise, as you agree to it, you can file a motion for  
24 approval of that.

25 MR. FARR: All right, Your Honor. Thank you.

1 THE COURT: All right.

2 Yes, sir.

3 MR. DONOVAN: Yes, Your Honor. The Department of  
4 Justice has proposed an ESI order. We're fine with it. I  
5 think we and the League of Women Voters are. Again, we're  
6 waiting on the defendants.

7 Two concerns from their report. One, again, they say  
8 under their proposal that no electronic discovery should  
9 proceed until there's agreed-upon search terms. I would  
10 like a deadline for that then, Your Honor, because I don't  
11 want to hear, which happens, we can't agree on search terms  
12 and then we're back here. That's number one. I don't think  
13 that's a proper proposal.

14 Number two, I'm not sure what this means, but they  
15 suggest that there are only "custodians whose files are to  
16 be searched not to exceed five custodians per party."

17 THE COURT: That's actually a pretty standard  
18 provision on electronic discovery model orders. I'll hear  
19 from you if we need to modify that in this case, but that  
20 number five comes from the model order for e-discovery.

21 MR. DONOVAN: Sure. But here, Your Honor, there's  
22 lot of parties. There's lots of legislators and there's  
23 lots of the State Board -- excuse me -- the Board of  
24 Elections. It just doesn't fit this case. I mean, I  
25 understand it's a standard, but it doesn't fit this case and

1 I would ask that that be waived and it be on a good-faith  
2 standard or we set a number and we come back because five,  
3 Your Honor, for this is just not reasonable in this day in  
4 age when everything is e-mailed. That's probably primarily  
5 how we're going to collect documents. A lot of people may  
6 not even have hard copies like the old days or very much.  
7 So I don't think it applies here, Your Honor. I don't think  
8 it fits the facts of this case.

9 THE COURT: All right. As far as deadlines, have  
10 there been requests yet for which the electronically stored  
11 records provisions would otherwise apply?

12 MR. DONOVAN: Yes.

13 THE COURT: All right. What kind of deadlines are  
14 you operating under?

15 MR. DONOVAN: We served those -- I have to check  
16 my -- November 29th we served the document requests on all  
17 the defendant parties.

18 THE COURT: All right.

19 MR. DONOVAN: We've also served third-party  
20 subpoenas, but they kind of staggered out over time with the  
21 process servers.

22 THE COURT: All right. So --

23 MR. DONOVAN: I haven't gotten any proposal on  
24 search terms or we haven't discussed it. I'm more --

25 THE COURT: But your request would require

1 search -- electronic searches?

2 MR. DONOVAN: Definitely.

3 THE COURT: So how would you propose limiting  
4 that? Would it be something you want a proposal from them  
5 by tomorrow or do you want -- what exactly are you asking  
6 for?

7 MR. DONOVAN: Well, sure, I'm asking at this time  
8 not to have this "five custodians per party" proposal. I'm  
9 happy to send them search terms and the listing of the  
10 people we would anticipate being searched. Obviously, since  
11 it's their witnesses and I -- I would need their, kind of,  
12 response and I would ask for that to be pretty quick.

13 I know the Department of Justice has already sent --  
14 and we tried to do this during the call and they just didn't  
15 have the answers, which I understand, but I don't want this  
16 to drag out since that's going to be the key of the  
17 discovery about what -- especially here where it's the State  
18 Board of Elections. What kind of data do you have? How do  
19 you store it? Some may actually be databases that we're  
20 asking for. Some may be people's e-mails. Some may be  
21 central servers where kind of a group, the State Board of  
22 Elections, maintains documents. It may be in different  
23 ways.

24 So if we could set a deadline, you know, maybe by the  
25 20th, for us to provide a report to Your Honor and then

1 maybe soon thereafter -- I'd appreciate before the  
2 holidays -- a telephonic conference or we can come back  
3 here. I'm just worried that will slow things down.

4 THE COURT: Well, the -- the default, to the  
5 extent there is one, is your request for discovery and their  
6 obligation to respond to that.

7 MR. DONOVAN: Sure.

8 THE COURT: Their response may well be the  
9 burdensomeness of the request to the extent it would involve  
10 an unlimited number of custodians or an unlimited number of  
11 search terms. So by working those things out, we avoid  
12 another hearing on that.

13 On the other hand, it seems a little bit advisory at  
14 this point in terms of what it is you're asking for exactly.  
15 I can tell you you don't have to agree to just five  
16 custodians and leave it at that in terms of whether you all  
17 can come up with an agreement for some other number of  
18 custodians or whether you wait and leave it to a motion to  
19 compel and protective order to try and work that out. If  
20 it's sufficiently presented today and you want to try and  
21 raise that and have some kind of ruling on that --

22 MR. DONOVAN: I understand your concern. I've  
23 noted it. I'll deal with Mr. Peters and the other defense  
24 counsel. We may be back, but I understand your point.

25 THE COURT: Right. Without having anything else

1 in terms of what exactly the dispute is, it's hard to  
2 resolve it; but what I'll tell you is by next week, which  
3 would be December 19th, you all should meet, work out an  
4 agreement on number of custodians and search terms or, to  
5 the extent you can't work out an agreement, file a motion  
6 with the Court as to your respective positions.

7 I think that five is the presumption in -- even in  
8 patent cases, with an option up to ten. I don't know if  
9 there is some way they can give you a number of individuals  
10 or you have a number of individuals or if there are  
11 particular people that you know that you would need that  
12 would give us a list of a number. Otherwise, I don't know  
13 that we can, in theory, make a decision about who you need  
14 and who you don't need.

15 MR. DONOVAN: Fair enough. That was their  
16 proposal. I just wanted to note that for the record.

17 THE COURT: All right. So at this point there is  
18 not an agreement as to electronically stored information and  
19 I will not include that as part of the scheduling order, but  
20 I will direct the parties to meet by next week, the 19th,  
21 and -- to the extent they can agree on number of custodians,  
22 search terms, those kinds of details; and then if you can't  
23 reach an agreement, file something with the Court either as  
24 a motion to compel or a motion for approval of each of your  
25 own proposals so that we can have a hearing on it, to the

1 extent we need to.

2 Again, if it is, though, still more of a theoretical  
3 issue, what I'll do is ask you to come up with an agreement,  
4 to the extent you can, whether it's five or ten; and if  
5 there are additional specific individuals that you need, it  
6 makes a lot more sense to me to consider those things once  
7 you know who it is that you're asking for, rather than just  
8 a number just for the sake of a number.

9 Mr. Peters, is there anything else you wanted to add on  
10 that or any other objection you have as to that?

11 MR. PETERS: I don't think so, Your Honor.

12 THE COURT: All right. Can you meet by December  
13 the 19th to determine where you stand on that?

14 MR. PETERS: I'm sorry.

15 THE COURT: Can you meet by December 19th and  
16 determine where you stand on that?

17 MR. PETERS: Yes, Your Honor.

18 THE COURT: All right.

19 In terms of number of interrogatories, requests for  
20 admissions, depositions, everyone seemed very similar,  
21 although worded differently in some instances. I want to  
22 make sure there's not confusion or ambiguity as to how this  
23 is going to work, but I'll hear from all of you first in  
24 terms of what you're anticipating. And it might be everyone  
25 is in agreement on this.

1 Yes, ma'am.

2 MS. RIGGS: Allison Riggs for the League.

3 I think we're pretty close on the number of depositions  
4 and dividing it by side. The RFAs would be by plaintiff  
5 group served upon defendants and defendants have -- I think  
6 with RFAs we were around 25. They could serve on each  
7 plaintiff group 25.

8 THE COURT: Just so everyone is clear exactly how  
9 you anticipate that working, each plaintiff group could  
10 propound 25 interrogatories that would be served --  
11 identical interrogatories on all of the individual  
12 defendants? Is that your --

13 MS. RIGGS: That was how I anticipated it.

14 THE COURT: That's why I think I wanted to make  
15 sure everyone is anticipating the same thing.

16 And then the defendants will have 25 identical  
17 interrogatories as to each of the plaintiff groups served on  
18 each of the individual plaintiffs in that case. Is that  
19 what you're anticipating?

20 MS. RIGGS: That's my understanding.

21 THE COURT: All right. And I'll make sure  
22 everyone has the same understanding.

23 Mr. Donovan, is that your understanding?

24 MR. DONOVAN: It is, Your Honor.

25 THE COURT: All right. Ms. Meza, is that the

1 United States' understanding?

2 MS. MEZA: Yes, Your Honor.

3 THE COURT: All right. Yes, sir.

4 MR. PETERS: Yes, Your Honor.

5 THE COURT: All right. So I think everyone is in  
6 agreement as to the number 25, which is for interrogatories  
7 and requests for admissions, and exactly how that is divided  
8 up. And I will --

9 MS. RIGGS: And then --

10 THE COURT: Yes, ma'am.

11 MS. RIGGS: I'm sorry, Your Honor. Depositions, I  
12 think we had said 50 per side, and the NAACP and the United  
13 States --

14 MR. DONOVAN: Up to.

15 MS. RIGGS: Up to. I'm not sure we anticipate  
16 needing that much per side.

17 THE COURT: Do you wish to be heard on that?

18 MR. PETERS: I believe we had said 50 per side,  
19 and I was thinking the NAACP and the League of Women Voters  
20 said 60.

21 THE COURT: I think the United States -- did the  
22 United States say 60 as well?

23 MS. MEZA: Yes, but we would be amenable to the 50  
24 as well.

25 MR. DONOVAN: Same way, Your Honor. I thought it

1 was a request on one of the conference calls. Just to be  
2 clear, that's an "up to" number. I think everyone is not  
3 necessarily --

4 MR. PETERS: Right, right.

5 THE COURT: All right. That would be divided up  
6 among each side. So all of the plaintiffs collectively  
7 could take 50 depositions of whoever you choose and then all  
8 of the defendants as to all of the cases together could take  
9 50 depositions.

10 MR. PETERS: That's how we understood it.

11 THE COURT: All right. Do -- is there any need to  
12 anticipate any disagreement or is that a high enough number  
13 so that it covers all of the eventualities here?

14 MS. RIGGS: Your Honor, just to clarify, that  
15 would include expert depositions as well?

16 THE COURT: Yes, ma'am, that would include  
17 everything.

18 MS. MEZA: We're in agreement.

19 THE COURT: All right.

20 MR. PETERS: Your Honor, the only thing I would  
21 note here is we proposed these numbers based on the parties  
22 that are in the case. You know, if intervenors come in, and  
23 depending on how many intervenors try to come in before it's  
24 over with and are allowed in, then we may want to come back  
25 to the Court.

1 THE COURT: Well, I know there's at least the one  
2 potential plaintiff intervenor group. As to that, if that  
3 happened, would that change this significantly for you?

4 MR. PETERS: I think at this point there's the one  
5 potential plaintiff intervenor or group of intervenors and  
6 one potential defendant on the defendants' side.

7 THE COURT: Right.

8 MR. PETERS: I think based on what I've seen of  
9 the plaintiffs who have sought to come in as intervenors so  
10 far I'm not sure it would change things appreciably for us,  
11 but just anticipating if more want to come in before it's  
12 over with.

13 THE COURT: And I don't -- what I don't want to do  
14 is come back and have to revisit this. So if you believe  
15 you're going to need more now, let's take it up. Otherwise,  
16 I'm going to assume, unless you can make a specific showing,  
17 that this is otherwise going to cover it.

18 MR. FARR: Your Honor.

19 THE COURT: Yes, sir.

20 MR. FARR: I don't know if we'll get there, but  
21 just so we don't have to come back to see you, I'd propose  
22 60. That doesn't mean that we would take all that, but we  
23 don't know where all this discovery is going and we're going  
24 to get some extra plaintiffs. It's better that we have more  
25 than have to come back and talk with you about this again.

1 MS. RIGGS: The League and the NAACP have no  
2 objection to that.

3 MS. MEZA: We don't have any objection either.

4 THE COURT: All right. What I'm going to do then  
5 is we can make it 60, but understanding that that  
6 anticipates the possibility of intervenors coming into the  
7 case.

8 Now, as to that, as I said, the motion to intervene  
9 is -- has not been briefed fully and hasn't been referred to  
10 me. I believe that's in your case, is that correct,  
11 Ms. Riggs?

12 MS. RIGGS: Yes, Your Honor.

13 THE COURT: Now, you're in agreement with that  
14 motion; is that correct?

15 MS. RIGGS: We have no objection to it.

16 THE COURT: My -- just in terms of case  
17 management, are you intending to amend the complaint just to  
18 add them as plaintiffs? Would you be proceeding that way?

19 MS. RIGGS: That would not be our --

20 THE COURT: You would intend to keep them  
21 separately?

22 MS. RIGGS: Yes, Your Honor.

23 THE COURT: All right. If they are proceeding  
24 separately, does it work best administratively for them to  
25 be intervenor plaintiffs or to be in a separate suit that we

1 join with these and make another plaintiff group?

2 MS. RIGGS: I would imagine that needs to be  
3 something that they answer. If there was another plaintiff  
4 group, I would assume it would change the number --  
5 I mean, the defendants would be able to serve --

6 THE COURT: I don't know that it would change  
7 numbers. It's just they would be a plaintiff group, so then  
8 the defendants would have the opportunity to serve the 25  
9 requests for admissions or interrogatories on them as a  
10 plaintiff group. I don't want to go too deeply into the  
11 motion to intervene. I just ask in terms of scheduling  
12 purposes and for purposes of how we structure this  
13 discovery.

14 My sense would be that if the motion to intervene is  
15 allowed or if they file a separate complaint and it's  
16 consolidated with these cases, at least for discovery  
17 purposes, we could just add them in as another plaintiff  
18 group. Would you see any reason not to handle it that way?

19 MS. RIGGS: No, Your Honor.

20 THE COURT: Any reason not to handle it that way?

21 MR. PETERS: I don't think so, Your Honor.

22 THE COURT: All right. And I visit that one only  
23 just because it may affect the discovery that we're talking  
24 about here today.

25 Anything else on that that we need to take up today?

1 MS. RIGGS: No, Your Honor.

2 THE COURT: All right. There was some reference  
3 to mediation. This case is exempt. I'm not going to  
4 require mediation formally. Of course, I don't know the  
5 extent to which it makes any sense for you all to talk with  
6 one another, but I assume that you will do that to the  
7 extent it's at all feasible or possible to work out anything  
8 that you can or otherwise narrow issues that you could.

9 As far as supplementations, I believe that is just as  
10 required by Rule 26 and not otherwise put any provisions or  
11 limits on that.

12 Is there anything else in terms of discovery that we  
13 need to include in the discovery order or address today?  
14 Mr. Peters?

15 MR. PETERS: I'm not aware of anything, Your  
16 Honor.

17 THE COURT: All right. Mr. Donovan, anything  
18 else?

19 MR. DONOVAN: One question on just the internal  
20 operating procedures of the court. Ms. Riggs raised the  
21 point we had discussed before. I understand you're  
22 presiding over this and then Judge Schroeder has some  
23 issues. Would we -- internal operating, just whether we  
24 would file a motion to ask for a status conference with  
25 Judge Schroeder just so we can understand the lay of the

1 land or are we kind of open to the procedures of the Court  
2 on that?

3 THE COURT: Generally pretrial scheduling and  
4 discovery will come to me. Anything that's dispositive or  
5 that relates to the preliminary injunction or trial will go  
6 to Judge Schroeder. If you need a conference ahead of time  
7 with Judge Schroeder, you can certainly request that and  
8 then it would be up to him whether and when he wanted to set  
9 that. If it's a discovery-related dispute, though, then  
10 that would be something I would ordinarily handle.

11 MR. DONOVAN: Great. Now, as primarily to the  
12 scheduling of the preliminary injunction hearing --

13 THE COURT: As to scheduling of the preliminary  
14 injunction hearing --

15 MR. DONOVAN: Just the length and logistics of  
16 that. We don't want to let that go too far before we raise  
17 it either with you or Judge Schroeder.

18 THE COURT: And I think that that would -- you can  
19 file the motion and the clerk's office will look at it and  
20 make a decision, but that would, in all likelihood, go to  
21 Judge Schroeder.

22 MR. DONOVAN: Thank you.

23 THE COURT: All right. Anything else we need to  
24 take up today as far as where we are?

25 Ms. Meza, anything else from the United States?

1 MS. MEZA: No, Your Honor. I just wanted to note  
2 that the United States has taken the lead on the ESI  
3 agreement and we will -- we have conferred with the parties  
4 and we will await the State's feedback on that and be ready  
5 to file something with the Court with an order.

6 THE COURT: Okay. That would be good and that  
7 would be then within the December 19th time frame.

8 MS. MEZA: Yes, Your Honor, awaiting, again, the  
9 State's feedback.

10 THE COURT: And then, Mr. Donovan, I know you had  
11 the concern about making sure this moves forward.  
12 Obviously, I'm interested in making sure this moves forward,  
13 but I also would rather do that when we're here rather than  
14 having to reconvene too many times. So if there's anything  
15 else that would be something we need to address that we  
16 could address today, I'll hear from you.

17 MR. DONOVAN: No, Your Honor. It's mostly just  
18 the anticipatory discovery issues, but we'll be back.

19 THE COURT: We'll take those up as they come.

20 All right. Anything else from the State, Mr. Peters?

21 MR. PETERS: Not that I'm aware of, Your Honor.  
22 Thank you.

23 THE COURT: All right. What I would intend to do  
24 is enter a written order memorializing these dates and the  
25 limits that we have here. And so I'll do that shortly,

1 either later this week or early next week.

2 But otherwise, if there are any other issues we need to  
3 take up, you can file a motion. If it's something that  
4 really is a issue that can be handled via telephone  
5 conference, then I am open to that possibility now that  
6 we've all been here today for this conference. If it's  
7 something that's going to require more than 30 minutes, then  
8 I will, in all likelihood, just need to set it on for  
9 another hearing. In anything like that, if you would  
10 include your time frame for when you need this resolved in  
11 order to keep things moving forward, then that would be  
12 helpful as well.

13 All right. Thank you all. We'll go ahead and adjourn  
14 court.

15 (Proceedings concluded at 12:12 p.m.)

16 C E R T I F I C A T E

17 I, LORI RUSSELL, RMR, CRR, United States District Court  
18 Reporter for the Middle District of North Carolina, DO  
HEREBY CERTIFY:

19 That the foregoing is a true and correct transcript of  
20 the proceedings had in the within-entitled action; that I  
21 reported the same in stenotype to the best of my ability and  
thereafter reduced same to typewriting through the use of  
Computer-Aided Transcription.

22  
23   
24 Lori Russell, RMR, CRR  
25 Official Court Reporter

Date: 1/6/14