**IN THE UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF VIRGINIA**
**RICHMOND DIVISION**

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| BARBARA H. LEE, *et al.*,<br><br>Plaintiffs,<br><br>v.<br><br>VIRGINIA STATE BOARD OF ELECTIONS, *et al.*,<br><br>Defendants. | Civil Action No. 3:15-CV-357-HEH |

**UNOPPOSED MOTION TO SEVER AND STAY PLAINTIFFS' LONG LINES CLAIMS PENDING RESOLUTION OF SETTLEMENT NEGOTIATIONS**

Pursuant to Federal Rule of Civil Procedure 42(b), Plaintiffs in the above-captioned case, by counsel, respectfully move the Court to sever and stay Plaintiffs' long lines claims pending the resolution of ongoing settlement negotiations with Defendants on those claims. Plaintiffs are mindful that the Court has indicated that it is not presently inclined to sever or stay the long lines claims while settlement negotiations proceed, but respectfully request that, for the reasons set forth in this motion, the Court consider granting the limited relief requested. Doing so would promote judicial economy; preserve the resources of the parties to this litigation, the public, and third parties who have received discovery requests in this matter; and protect against significant prejudice to Plaintiffs in the unlikely event that settlement on these claims is not reached within the next month. It would also promote speedy and efficient settlement negotiations, without requiring the Parties to unnecessarily divert resources to discovery and other efforts related to preparing for a trial on the long lines claim. Defendants do not oppose this motion.

Accordingly, and for the reasons that follow, Plaintiffs request that the Court issue the proposed order submitted herewith.

1. Plaintiffs and Defendants (together, the "Parties") have made significant progress in their negotiations and are in the process of investigating some final issues while they simultaneously draft a proposed agreement based on their discussions so far. However, Defendant the Virginia State Board of Elections (the "SBE"), will be unable to finally approve any agreement until its next scheduled meeting, which will take place on December 16, 2015.

2. Given the proximity of the trial date and the substantial expense of continuing discovery on claims that the Parties believe are almost certain to be resolved without the need for trial, granting the requested relief is warranted under Rule 42(b), which permits the Court, "[f]or convenience, to avoid prejudice, or to expedite and economize . . . . [to] order a separate trial of one or more separate issues [or] claims," as well as the Court's inherent power to manage its docket to promote fair and efficient adjudication of the matters before it. Fed. R. Civ. P. 42(b); *Landis v. N. Am. Co*., 299 U.S. 248, 254 (1936) (district court has inherent power to "control the disposition of cases on its docket with economy of time and effort for itself, for counsel and litigants"). "The party requesting separate trials [under Rule 42(b)] bears the burden of showing that bifurcation would '(1) promote greater convenience to the parties, witnesses, jurors, and the court, (2) be conducive to expedition and economy, and (3) not result in undue prejudice to any party.'" *Shire LLC v. Mickle*, No. 7:10-CV-00434, at *2 (W.D. Va. July 15, 2011) (quoting *Hogan v. Fairfax Cnty. Sch. Bd*., No. 01:08CV250 (JCC), 2008 WL 4924692, at *1 (E.D. Va. Nov. 13, 2008) (citation omitted). The Court has the implicit authority to limit discovery as to any segregated issues so as to minimize and defer "costly and possibly unnecessary discovery

proceedings pending resolution of potentially dispositive preliminary issues." *Ellingson Timber Co. v. Great N. Ry. Co.*, 424 F.2d 497, 499 (4th Cir. 1970)).

3. Granting the motion will promote expedited settlement, and will ensure that the Parties (and, accordingly, the public)—as well as certain third parties who have received discovery requests, as discussed below—do not expend additional unnecessary resources on discovery and trial preparation over claims that are likely to be resolved without the necessity for trial. *See, e.g.*, *United States v. Kramer*, 770 F. Supp. 954, 961 (D.N.J. 1991) (finding requested stay of discovery on claims subject to ongoing settlement negotiations would "provide[] an incentive for [parties] to enter into good-faith settlement negotiations without overburdening . . . then . . . with extensive formal discovery").

4. It will similarly promote judicial economy: without severance and stay, Plaintiffs expect that they will be required to file motions to compel discovery from certain third party jurisdictions (i.e., county and municipal registrars represented by a private law firm) who have received subpoenas for information related to these claims but have failed thus far failed to produce much of what was requested, or to produce it in usable format. Similarly, Plaintiffs understand that the same third parties are likely to file motions to quash or for protective orders. If discovery on the long lines claim is not stayed, Plaintiffs, these third parties, and the Court will almost certainly be required to expend significant resources in litigating these discovery issues, to ensure that, in the unlikely event that the ongoing negotiations do not result in a settlement, Plaintiffs are not prejudiced by not being able to obtain the necessary data to conduct analyses on these issues.

5. In addition, if discovery is not stayed, Plaintiffs will have to choose between having experts prepare expensive and time-consuming expert analyses on the long lines claims,

that is likely to not be necessary or relevant to the issues that the Court will be tasked with deciding at trial, or foregoing such evidence at trial, if the negotiations falter. Thus, granting the motion furthers the public policy that favors private settlement of disputes. *Cf. Crandell v. United States*, 703 F.2d 74, 75 (4th Cir. 1983) ("A trial judge if possible should assist parties in their attempts at settlement, even to the point of encouraging them.").

6. Granting the motion will not prejudice Defendants, who do not oppose this motion. It will also not prejudice the third parties who have received subpoenas for discovery related to these claims; indeed, to the contrary, and given the strong likelihood of settlement, their resources (which are also public resources) are also likely to be conserved if the Court grants the motion.

7. Plaintiffs are mindful of the Court's interest in resolving the matters before it without unnecessary delay, as well as the public interest in resolving Plaintiffs' claims sufficiently in advance of the 2016 General Election. To this end, Plaintiffs seek a limited stay of these proceedings as they relate to the long lines claims. Pursuant to the Proposed Order submitted herewith, the Parties would update the Court on the status of these negotiations by no later than noon on December 18, which is two days after the SBE is scheduled to next meet. In the unlikely event that the Parties' negotiations falter before that date, they would notify the Court immediately. This approach will ensure that the Parties are not prejudiced by having to choose between incurring additional expenses related to the long lines claim or foregoing evidence central to those claims if the current negotiations do not ultimately result in settlement, while at the same time guarding against undue delay of the final resolution of this matter.

8. One final note is worth making: Although these types of motions are ordinarily captioned as motions "to sever," as one court in the Eastern District of Virginia recently noted,

"[s]eparate trials are a distinct procedure from severance," and Rule 42(b) is the vehicle to request the former. *Thornapple Associates, Inc. v. Izadpanah*, No. 1:14CV767 (JCC/TRJ), 2014 WL 7239018, at *3 (E.D. Va. Dec. 17, 2014). Thus, as explained, in the unlikely event that the Parties are unable to finalize settlement in the next month, Plaintiffs would request that the Court hold a separate trial on the long lines claims, but enter judgment on the matter as a whole. Proceeding thusly, would serve judicial "economy concerns while also allowing the underlying action to proceed on schedule," *id*., as well as preserve the resources of the Parties, the public, third parties, and the Court against needless expenditure when Plaintiffs anticipate these issues will not ultimately require further Court adjudication.

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For all of these reasons, Plaintiffs respectfully request that the Court enter the attached proposed order severing and staying the long lines claims pending resolution of the Parties' on-going settlement negotiations.

DATED: November 23, 2015

By: */s/ Aria C. Branch*

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**CERTIFICATE OF SERVICE**

On November 23, 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following:

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