

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

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

Plaintiffs,

v.

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

Defendants.

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**NAACP PLAINTIFFS'  
MOTION FOR  
PRELIMINARY INJUNCTION**

**Case No.: 1:13-CV-658**

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

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et al.,

Defendants.

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**Case No.: 1:13-CV-660**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA, et al,

Defendants.

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**Case No.: 1:13-CV-861**

**NAACP PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION  
AND PROPOSED SCHEDULE**

The NAACP Plaintiffs respectfully move pursuant to Rule 65(a) of the Federal Rules of Civil Procedure for a preliminary injunction to enjoin implementation of the Photo ID requirements of North Carolina House Bill 589, Session Law 2013-381, as amended, during the March 2016 primary elections in North Carolina. Notwithstanding the recent material changes to the Photo ID requirement enacted since the original passage of the law in 2013, the State has failed to prepare itself or educate voters sufficiently to overcome the substantial misinformation brought by two years of a “soft rollout” of the requirement as originally enacted.

This Court should issue a preliminary injunction because: (1) the NAACP Plaintiffs are likely to prevail on the merits related to the March 2016 primary elections; (2) implementation of the requirement during the March 2016 primary elections will create irreparable harm; (3) the balance of equities favors injunctive relief for the March 2016 primary elections; and (4) an injunction is in the public interest.

In support of this Motion, the NAACP Plaintiffs provide (i) a Memorandum in Support of its Motion for Preliminary Injunction; and (ii) and exhibits A through S to this motion, including documentary evidence, excerpts of deposition and trial testimony, and declarations.

A preliminary injunction is necessary to protect the rights of North Carolina voters in the March 2016 primary elections because a permanent injunction entered even shortly following the scheduled January 25, 2016 trial risks providing insufficient time for North

Carolina officials to implement the remedy, provides insufficient time for appellate review, if necessary, and risks an appellate stay. The NAACP Plaintiffs thus ask the Court to adopt a schedule that will allow it to rule on this Motion with sufficient time for appellate review and implementation of a preliminary injunction prior to the start of the March 2016 primary election cycle.<sup>1</sup>

Counsel for the NAACP Plaintiffs met and conferred with counsel for the Defendants earlier today regarding the schedule for this Motion. The NAACP Plaintiffs notified the Defendants that they would be filing this Motion today<sup>2</sup> and proposed a schedule, set forth below, for briefing of the Motion. Defendants requested until early

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<sup>1</sup> The Photo ID law is scheduled to go into effect on January 1, 2016. Early voting for the March 15 primary will start no later than March 3, 2016 (and possibly earlier if the court rules for plaintiffs on the pending claims related to the State's reduction of the early voting period). Even if the court were to rule immediately following the four day trial set to begin on January 25, 2016 in this matter, entry of an injunction at that time might result in an appellate court stay on the ground that it was entered too close to the date of the March election and there would be no time for an appeal of the merits of the ruling prior to the March Primaries. See *Purcell v. Gonzalez*, 549 U.S. 1 (2006). For example, in recent litigation regarding Wisconsin's Photo ID requirement, the Supreme Court lifted a Seventh Circuit stay entered 52 days prior to the November 2014 election. *Frank v. Walker*, 766 F.3d 755 (7th Cir. 2014) *vacated*, 135 S. Ct. 7 (2014). Although the Court did not state its reasons, commentators opine that the Court was applying the *Purcell* decision, which disfavors changes in election procedures close to the election date. Rick Hasen, *Analysis: Supreme Court Stops Immediate Implementation of WI Voter ID Law; and a Thought on Texas*, Election L. Blog, Oct. 7, 2014, available at <http://electionlawblog.org/?p=66601>. Fifty-two days prior to the March Primary Election date is January 23, 2016 and 52 days prior to the start of North Carolina early voting is January 12, 2016.

<sup>2</sup> The NAACP Plaintiffs originally notified the Defendants and the Court of their intention to file a preliminary injunction motion on November 13, 2015. [Case No. 13-cv-658, ECF No. 385.] Pursuant to the schedule established by the Court for resolution of the Photo ID claim, the deadline to file such a motion is December 8, 2015, but the NAACP Plaintiffs have opted to file this Motion early to ensure prompt resolution well in advance of the March 2016 primary election.

next week to respond to the proposed schedule. In the meantime, the NAACP Plaintiffs set forth the proposed schedule below for the Court's consideration, in the interests ensuring expedited review of this Motion.

In response to Defendants' Objection to this Court's Pre-Trial Schedule, filed on November 18, 2015 [ECF No. 388], the NAACP Plaintiffs respectfully disagree that the pretrial schedule as set forth in the Rule 26(f) Report in this case is unworkable given the NAACP Plaintiffs' filing of this Motion. The NAACP Plaintiffs agree with the United States that this Motion need not alter the existing trial calendar. [See ECF No. 367.] Rather, the NAACP Plaintiffs believe that this Motion can be heard on an expedited basis while allowing the remaining pre-trial deadlines to remain intact. The Motion does not rely upon any new expert assessments, and largely incorporates evidence from the existing record in this case. The NAACP Plaintiffs' position is that an evidentiary hearing on this Motion is not necessary, though respectfully suggest that oral argument may be of value to the Court.

Accordingly, the NAACP Plaintiffs request the court adopt an expedited schedule for the Preliminary Injunction, as set forth below, and otherwise maintain the existing deadlines set forth in the Rule 26(f) Report. Alternatively, the NAACP Plaintiffs request that this Court set a Pre-Trial Scheduling Conference during the week of November 30 to address the schedule for this Motion and the Trial Schedule in this case.

## **PROPOSED SCHEDULE**

The NAACP Plaintiffs hereby propose the following schedule for resolution of this Motion, discovery, and the remaining pre-trial deadlines:

### **Motion for Preliminary Injunction**

- The NAACP Plaintiffs are filing this Motion on November 24, 2015.
- Defendants' Response to this Motion shall be due no later than December 8, 2015.
- Plaintiffs' Reply shall be due no later than December 11, 2015.
- Should the Court set Oral Argument on this Motion, Plaintiffs respectfully suggest that said Argument be scheduled during the week of December 14, 2015.

### **Deadlines to Respond Discovery Related to Preliminary Injunction**

Any documents to be produced in response to discovery requests must be produced within the time provide by the Federal Rules of Civil Procedure. In any event, all discovery must be fully responded to by December 18, 2015, as set forth in the current Rule 26(f) Report. However, this schedule will be expedited with respect to the following discovery requests relevant to the Motion for Preliminary Injunction:

- Responses to the NAACP Plaintiffs' Third Set of Interrogatories served upon Defendants on November 16, 2015, will now be due no later than December 8, 2015.

- Responses to Defendants' Third Set of Interrogatories served upon the NAACP Plaintiffs on November 23, 2015, will now be due no later than December 11, 2015.
- Defendants shall make available a representative for the Rule 30(b)(6) deposition noticed on November 16, 2015 following the submission of the Defendants' interrogatory responses but before Argument on the Motion.

### **Remaining Pre-Trial Deadlines**

For the reasons set forth above, the NAACP Plaintiffs request that all of the remaining pre-trial deadlines set forth in the Rule 26(f) Report remain intact, including Parameters for Discovery; deadlines for Depositions (except as set forth above with respect to the Preliminary Injunction), Expert Discovery, Motions in Limine and *Daubert* Motions, Pre-Trial Brief, Trial Date and Post-Trial Findings of Fact and Conclusions of Law.

### **PRAYER FOR RELIEF**

WHEREFORE, pursuant to Fed. R. Civ. P. 65(a), the NAACP Plaintiffs respectfully move this Court to enter an order enjoining Defendants from implementing or enforcing the Photo ID requirement outlined in Part 2 of North Carolina Session Law 2013-138 and its amendments as specified in North Carolina Session-Law 2015-103 during the March 2016 North Carolina primary elections.

The NAACP Plaintiffs further respectfully move this Court to adopt Plaintiffs' Proposed Schedule, or alternatively set a Scheduling Conference as soon as practicable during the week of November 30, 2015 to address the Schedule in this case.

Dated: November 24, 2015

Respectfully submitted,

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*Attorneys for Plaintiffs in North Carolina State Conference of the NAACP, et al. v. McCrory, et al.*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 24, 2015, I electronically filed the foregoing **NAACP PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**, using the CM/ECF system in case numbers 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861, which will send notification of such filing to all counsel of record.

/s/ Daniel T. Donovan  
Daniel T. Donovan

Attorney for Plaintiffs in  
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