

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

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

Plaintiffs,)

v.)

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,)

and)

LOUIS M. DUKE, *et al.*,)

Plaintiffs-Intervenors,)

v.)

1:13CV660

THE STATE OF NORTH CAROLINA, *et al.*,)

Defendants.)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

1:13CV861

THE STATE OF NORTH CAROLINA, *et al.*,)

Defendants.)

**DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFFS' JOINT MOTION TO MODIFY PRETRIAL SCHEDULING
ORDER**

Defendants oppose Plaintiffs' motion to modify the pretrial scheduling order. In addition, by separate motion, Defendants move for a rescheduling of the trial date in this matter based on conduct by certain counsel for Plaintiffs in seeking and obtaining a trial date in a separate but related action in North Carolina Superior Court during the term that the instant action is already set for trial. In opposition to Plaintiff's motion, Defendants show unto the Court as follows:

1. The instant motion concerns three cases which have been consolidated for purposes of discovery, 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861 (collectively, "the federal cases").
2. A scheduling order was entered in the federal cases on December 13, 2013. That order set the trial in these cases for the July 2015 Civil Master Calendar.
3. On October 14, 2014, Plaintiffs for all three cases jointly filed a motion requesting a status conference on certain discovery matters. In particular, Plaintiffs requested that certain deadlines be changed in the scheduling order. Defendants consented to all of the changes to the scheduling order that were identified in Plaintiffs' motion.
4. On November 7, 2014, following a telephonic hearing on Plaintiffs' motion, the Court entered an amended scheduling order. Under the amended

scheduling order, dispositive motions would be fully briefed by May 15, 2015, and the trial remains scheduled for the July 2015 Civil Master Calendar.

5. Plaintiffs subsequently requested additional changes to the scheduling order. Essentially, Plaintiffs propose to extend the deadlines for expert reports and the close of discovery by approximately an additional month beyond the deadlines just entered by the Court, but then compress the briefing schedule for dispositive motions in order to have dispositive motions fully briefed by May 15, 2015.
6. Defendants have informed Plaintiffs that further postponements of discovery deadlines would be acceptable to Defendants only if the trial date could also be postponed. Plaintiffs have opposed Defendants' suggestion of postponing the trial date.
7. Defendants do not object in principle to extending deadlines for expert reports and discovery. However, Plaintiffs' proposal would have dispositive motions due less than two weeks after the close of discovery, which Defendants find untenable. A more rational schedule would allow more time for the parties to adequately prepare dispositive motions and briefing. The typical amount of time for the parties to prepare such motions after the conclusion of discovery is thirty days. It seems obvious that in a case of this magnitude at least as much time, if not more time, should be allowed for the parties to prepare and present dispositive motions. Accordingly, Defendants cannot agree to Plaintiffs' compressed schedule.

8. Defendants believe that the proper course of action is to briefly delay the trial date, which would allow for a reasonable extension of discovery, a reasonable briefing period for dispositive motions, and time for the Court to rule on dispositive motions before trial preparations must begin. Plaintiffs, however, will not agree to a rescheduling of the trial.
9. In the absence of any postponement of the trial date, Defendants oppose Plaintiffs' motion to modify the pretrial scheduling order.

CONCLUSION

For the foregoing reasons, Plaintiffs' Joint Motion to Modify Pretrial Scheduling Order should be denied

This, the 3rd day of December, 2014.

ROY COOPER
ATTORNEY GENERAL OF NORTH
CAROLINA

By: /s/ Alexander McC. Peters
Alexander McC. Peters
Senior Deputy Attorney General
N.C. State Bar No. 13654
apeters@ncdoj.gov

/s/ Katherine A. Murphy
Katherine A. Murphy
Special Deputy Attorney General
N.C. State Bar No. 26572
kmurphy@ncdoj.gov

N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 716-6900

Facsimile: (919) 716-6763
*Counsel for Defendants North Carolina and
State Board of Election Defendants*

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr
Thomas A. Farr
N.C. State Bar No. 10871
thomas.farr@ogletreedeakins.com

/s/ Phillip J. Strach
Phillip J. Strach
N.C. State Bar No. 29456
phil.strach@ogletreedeakins.com

4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
*Co-counsel for Defendants North Carolina
and State Board of Election Defendants*

BOWERS LAW OFFICE LLC

By: /s/ Karl S. Bowers, Jr.

Karl S. Bowers, Jr.*

Federal Bar #7716

P.O. Box 50549

Columbia, SC 29250

Telephone: (803) 260-4124

E-mail: butch@butchbowers.com

*appearing pursuant to Local Rule 83.1(d)

Counsel for Governor Patrick L. McCrory

By: /s/ Robert C. Stephens

Robert C. Stephens (State Bar #4150)

General Counsel

Office of the Governor of North Carolina

20301 Mail Service Center

Raleigh, North Carolina 27699

Telephone: (919) 814-2027

Facsimile: (919) 733-2120

E-mail: bob.stephens@nc.gov

Counsel for Governor Patrick L. McCrory

CERTIFICATE OF SERVICE

I, Katherine A. Murphy, hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Counsel for United States of America:

T. Christian Herren, Jr.
John A. Russ IV
Catherine Meza
David G. Cooper
Spencer R. Fisher
Elizabeth M. Ryan
Jenigh J. Garrett
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Gill P. Beck
Special Assistant United States Attorney
Office of the United States Attorney
United States Courthouse
100 Otis Street
Asheville, NC 28801

Counsel for NAACP Plaintiffs:

Penda D. Hair
Edward A. Hailes, Jr.
Denise D. Liberman
Donita Judge
Caitlin Swain
ADVANCEMENT PROJECT
Suite 850
1220 L Street, N.W.
Washington, DC 20005
phair@advancementproject.com

Adam Stein
TIN FULTON WALKER & OWEN
312 West Franklin Street
Chapel Hill, NC 27516
astein@tinfulton.com

Irving Joyner
P.O. Box 374
Cary, NC 27512
ijoyner@ncsu.edu

Thomas D. Yannucci
Daniel T. Donovan
Susan M. Davies
K. Winn Allen
Uzoma Nkwonta
Kim Knudson
Anne Dechter
Jodi K. Wu
Christopher J. Maner
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
tyannucci@kirkland.com

***Counsel for League of Women Voter
Plaintiffs:***

Anita S. Earls
Allison J. Riggs
Clare R. Barnett
George E. Eppsteiner
Southern Coalition for Social Justice
1415 Hwy. 54, Suite 101
Durham, NC 27707
anita@southerncoalition.org

Laughlin McDonald
ACLU Voting Rights Project
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
lmcdonald@aclu.org

Dale Ho
Julie A. Ebenstein
ACLU Voting Rights Project
125 Broad Street
New York, NY 10004
dale.ho@aclu.org

Christopher Brook
ACLU of North Carolina Legal Foundation
PO Box 28004
Raleigh, NC 27611-8004
cbrook@acluofnc.org

Counsel for the Intervening Plaintiffs:

John M. Devaney
jdevaney@perkinscoie.com
Marc E. Elias
melias@perkinscoie.com
Elisabeth C. Frost
efrost@perkinscoie.com
Joshua L. Kaul
jkaul@perkinscoie.com
PERKINS COIE, LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960

Edwin M. Speas, Jr.
espeas@poynerspruill.com
John W. O'Hale
johale@poynerspruill.com
Caroline P. Mackie
cmackie@poynerspruill.com
POYNER SPRUILL, LLP
301 Fayetteville St., Suite 1900
Raleigh, NC 27601

This, the 3rd day of December, 2014.

/s/ Katherine A. Murphy
Katherine A. Murphy
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
(919) 716-6920
kmurphy@ncdoj.gov