

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

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

Plaintiffs,

v.

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

Defendants.

**UNITED STATES' OPPOSITION
TO DEFENDANTS' OBJECTION
TO ORDER OF 5 DECEMBER
2014 DENYING DEFENDANTS'
MOTION TO RESCHEDULE
TRIAL**

Civil Action No. 1:13-CV-658

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

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et
al.,

Defendants.

Civil Action No. 1:13-CV-660

UNITED STATES OF AMERICA,

Plaintiff,

v.

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

Defendants.

Civil Action No. 13-cv-861

The United States hereby opposes Defendants' objection to the Magistrate Judge's order of December 5, 2014, denying Defendants' motion to reschedule trial. *See* ECF No. 209, 13-cv-861.¹

Resolution of this matter prior to upcoming elections in 2016 requires that the case remain on the July 2015 trial calendar; indeed, the current trial date was set for that reason. First, pursuant to North Carolina election law, the State's 2016 presidential preference primary "shall be the Tuesday after the first South Carolina presidential preference primary," if the primary in South Carolina is conducted prior to March 15 of any presidential election year. *See* N.C. Gen. Stat. § 163-213.2. South Carolina habitually conducts one of the first presidential preference primaries each cycle after New Hampshire. For example, in 2012, South Carolina conducted its Republican presidential preference primary on January 21, 2012. In 2008, South Carolina conducted its Republican presidential preference primary on January 19, 2008, and its Democratic presidential preference primary on January 26, 2008.² Although the South Carolina State Election Commission website has not yet listed a date for its 2016 presidential preference primaries, other websites that track this information anticipate that South Carolina's primary will once again be early in 2016.³ Therefore, the date of the North Carolina presidential preference primary will likely fall in the first few months of 2016.

¹ Pleadings cited herein were filed in all three of the related cases. Citations are to documents filed in *United States v. North Carolina*, 13-cv-861.

² *See* <http://www.enr-scvotes.org/SC/36831/139730/en/summary.html>; *see also* http://www.scvotes.org/statistics/2008_presidential_primary_results.

³ For example, one website tracking primaries in 2016 estimated that the South Carolina primary will be on January 23, 2016, with the North Carolina primary on January 26, 2016. *See* <http://www.thegreenpapers.com/P16/paag.phtml>.

Moving the trial from the Court's July 2015 calendar to the October 2015 trial calendar would dramatically shorten the time available for this court to issue a ruling, for the state to implement any relief ordered by this court, and for the resolution of any appeals filed in this case. Experience with the events following the preliminary proceedings in this case illustrates the nature of the problem. This Court conducted an evidentiary hearing on motions for preliminary injunction in July 2014, and issued an August 8, 2014, ruling denying the motion. On October 1, 2014, the Fourth Circuit entered an order for the district court "to enter as swiftly as possibly a preliminary injunction" against two provisions of House Bill 589 ahead of the November 4, 2014 election. *League of Women Voters v. North Carolina*, 769 F.3d 224, 248-49 (4th Cir. 2014). Although the Fourth Circuit acted expeditiously on the appeal, the Supreme Court subsequently stayed the order without comment, based most likely on *Purcell* concerns about altering election rules on the eve of an election. *See, e.g.*, Order, 14-cv-1845, *League of Women Voters v. North Carolina* (4th Cir. Oct. 9, 2014) (recalling mandate following stay issued by U.S. Supreme Court); *see also Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006) (vacating order enjoining election provision on the eve of the election, without expressing a view on the merits). Proceeding on the July 2015 trial calendar would allow full trial and appellate consideration of the matter without a reprise of the same issue about changing election rules too close to the date of an election. Accordingly, the United States requests that the Court keep this case on the July 2015 trial calendar.

Regarding Defendants' concerns about any potential scheduling conflict with the state trial court matter, the United States is amenable to setting the trial in this case

towards the end of the July 2015 trial calendar, to avoid a conflict with the schedule in the state court case.

Dated: January 2, 2015

RIPLEY RAND
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Respectfully submitted,

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CERTIFICATE OF SERVICE OF DISCOVERY

I hereby certify that on January 2, 2015, I electronically filed the foregoing **United States' Opposition to Defendants' Objection to Order of 5 December 2014 Denying Defendants' Motion to Reschedule Trial**, 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.

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