

**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.

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. 1:13-CV-861

**DEFENDANTS' RESPONSE TO PLAINTIFFS' JOINT MOTION TO DEEM  
REQUESTS FOR ADMISSION TO COMPLY WITH SCHEDULING ORDER**

Defendants, through counsel, hereby respond to Plaintiffs' Joint Motion to Deem Requests for Admission to Comply with Scheduling Order ("Plaintiffs' Joint Motion"). For the reasons below, Defendants respectfully request that the Court deny Plaintiffs' Joint Motion.

Pursuant to the Court's Scheduling Order filed on December 13, 2013, each Plaintiff group was limited to 25 requests for admission to be served on Defendants. The Court's Scheduling Order filed on December 5, 2014, set the discovery deadline for March 23, 2015; by Order dated March 9, 2015, this deadline was extended to March 24, 2015.

On February 18, 2015, the United States served the United States' First Set of Requests for Admission on Defendants. Despite the limit of 25 set in the Scheduling Order, the United States propounded 96 Requests for Admission on Defendants. The Requests for Admission, which appeared only under the caption of the action brought by the United States alone and not under the caption of cases brought by other plaintiffs, clearly stated that they were being propounded by the United States and not jointly by all four Plaintiff groups. *See* Pls.' Joint Mot. Ex. 1.

Also on February 18, 2015, in addition to being served with the United States' First Set of Requests for Admission, Defendants were served with (1) the United States' Fourth Set of Interrogatories; (2) the United States' Sixth Set of Requests for Production of Documents; and (3) the Duke Plaintiff-Intervenors' Second Requests for Production.

Under the Federal Rules of Civil Procedure governing discovery, Defendants' responses to these four sets of discovery requests were all due on March 23, 2015, the day before the close of the written discovery period. During the same time period that Defendants were required to respond to these four sets of discovery requests, Defendants were also engaged in taking and defending depositions. Specifically, depositions of approximately 18 of the plaintiffs were taken on or before March 23, 2015.

Defendants were aware that under the Scheduling Order, they were under no obligation to respond to more than 25 requests for admission from the United States. This fact entered into the planning and staffing by Defendants' counsel of all of its discovery obligations.

On March 9, 2015, as a courtesy to the United States, counsel for Defendants offered the United States an opportunity to identify the 25 Requests for Admission that the United States preferred for Defendants to respond to. In response, on March 11, 2015, counsel for the United States requested, for the first time, that Defendants "consider the requests for admission reflected in the United States' First Set of Requests for Admission as requests from each Plaintiff group." Pls.' Joint Mot. Ex. 2. With only 12 days remaining to complete four outstanding discovery requests in addition to attending the numerous depositions scheduled, Defendants declined to do so. Plaintiffs now ask this Court to deem the United States' 96 Requests for Admission as having been served on Defendants by all four Plaintiff groups.

Plaintiffs have advanced no basis for deeming the United States' Requests for Admission as having come from all four Plaintiffs' groups other than to evade the limits

set in the Scheduling Order. There is no indication that all four Plaintiffs' groups intended to propound requests for admission; rather, once it became evident that the United States had violated the Scheduling Order, and the time had passed for any party to propound additional discovery, the other Plaintiff groups joined the United States in requesting to have the United States' requests "deemed" as having come from all four groups.

Rather than advance a legitimate reason for the motion, Plaintiffs contend that Defendants will not be prejudiced by the requested circumvention of the Scheduling Order. To the extent prejudice to Defendants is a proper factor in determining whether to grant Plaintiffs' unsupported motion, Defendants will indeed be prejudiced by an order deeming the United States' Requests for Admission as having been served by all four Plaintiff groups. The parties are currently engaged in depositions of almost all of the expert witnesses identified in these cases, which depositions must be completed by April 10, and the remaining plaintiffs, which depositions must be completed by April 30, 2015. Additionally, since February 23, 2015, Plaintiffs have collectively identified more than 70 new fact witnesses in amended Rule 26 disclosures, the majority of which have been identified for the first time in just the last two weeks. On March 27, 2015, Plaintiffs served notices of depositions, all scheduled during the month of April, for 39 of these new fact witnesses. Finally, dispositive motions are due on April 17, 2015. Imposing a requirement now that Defendants must respond to 71 additional requests for admission would severely compromise Defendants' abilities to defend these cases.

Defendants have complied with all of Plaintiffs' legitimate discovery requests that

were properly propounded within the discovery period. To date, Defendants have responded to the following discovery requests from the four Plaintiff groups:

<u>Request</u>	<u>Served</u>
Plaintiffs' Joint First Set of Requests for Production	12/02/13
Plaintiffs' Joint Second Set of Requests for Production	12/20/13
League of Women Voters Plaintiffs' First Set of Requests for Production	12/20/13
United States' First Set of Requests for Production of Documents	12/31/13
United States' Second Set of Requests for Production of Documents	12/31/13
Plaintiffs League of Women Voters' First Interrogatories	01/23/14
Plaintiffs' Joint Third Set of Requests for Production	01/23/14
NAACP Plaintiffs' First Set of Interrogatories	01/31/14
United States' First Set of Interrogatories	03/20/14
United States' Third Set of Requests for Production of Documents	07/02/14
United States' Second Set of Interrogatories	11/14/14
United States' Fourth Set of Requests for Production of Documents	11/14/14
United States' Third Set of Interrogatories	12/08/14
United States' Fifth Set of Requests for Production of Documents	12/08/14
NAACP Plaintiffs' Second Set of Interrogatories	12/08/14
Plaintiffs' Joint Fourth Set of Requests for Production	12/08/14
Duke Plaintiff-Intervenors' First Set of Interrogatories	02/04/15
Duke Plaintiff-Intervenors' First Requests for Production	02/04/15
United States' First Set of Requests for Admission (in part)	02/18/15
United States' Fourth Set of Interrogatories	02/18/15
United States' Sixth Set of Requests for Production of Documents	02/18/15
Duke Plaintiff-Intervenors' Second Requests for Production	02/18/15

Consistent with their obligations under the Scheduling Order, Defendants responded to the 25 requests for admission that the United States identified. To the extent the United States' Request for Admission did not comply with the Scheduling Order, Defendants should not be made to respond to it.

In the alternative, should the Court grant Plaintiffs' Joint Motion, Defendants respectfully request that the Court allow Defendants until April 30, 2015, to respond to the 71 additional requests for admission.

Respectfully submitted, this, the 30th day of March, 2015.

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**CERTIFICATE OF SERVICE**

I, Katherine A. Murphy, hereby certify that I have this 30th day of March 2015 served the foregoing by electronic mail and by United States Mail in accordance with the Federal Rules of Civil Procedure to the following:

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This, the 30th day of March, 2015.

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