

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' RESPONSE
TO DEFENDANTS' OBJECTIONS
TO THE TRIAL DATE AND
PRETRIAL SCHEDULE**

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

UNITED STATES' RESPONSE TO DEFENDANTS'
OBJECTIONS TO THE TRIAL DATE AND PRETRIAL SCHEDULE

The United States, by and through the undersigned attorneys, responds to Defendants' objections to the pretrial schedule and trial date, and respectfully asks this Court to reject Defendants' requests for further delay. Contrary to Defendants' objections, the Court's current schedule is manageable and provides for the timely resolution of this matter, all of which is in the best interest of both the State's voters and election administrators.

1. On November 13, 2015, the NAACP Plaintiffs gave notice to the Court and the other parties that they intended to file a preliminary injunction motion regarding the Defendants' implementation of the photo identification requirement. ECF No. 366.¹

2. On November 18, 2015, before even knowing the scope of the NAACP Plaintiffs' motion for a preliminary injunction, the Defendants renewed an earlier request that this Court slow down the pretrial schedule and delay resolution of the remaining issues in the case. Defendants argued that the pretrial schedule and January trial date were already proving to be "unworkable," and that proceeding with a trial in January would make the motion for a preliminary injunction "superfluous." ECF No. 369.

3. On November 24, 2015, the NAACP Plaintiffs filed their motion for a preliminary injunction. ECF No. 371. The memorandum in support of the NAACP Plaintiffs' motion for preliminary injunction clarifies that the scope of evidence they ask

¹ Cited documents are from Civil Action No. 1:13-cv-861.

this Court to review in relation to the motion is limited and will not require an evidentiary hearing. The NAACP Plaintiffs explain as follows:

The facts concerning the State's lack of efforts are largely undisputed and any open factual questions can be established through limited and straightforward discovery, which can be expedited under the circumstances without significant burden on the State. Insofar as the NAACP's Motion is based primarily on existing evidence already in the trial record from this summer's trial, the NAACP Plaintiffs are not requesting an evidentiary hearing, and instead ask that the Court rule on the basis of (i) the written evidence attached as exhibits to this Motion, (ii) evidence already in the trial record, and (iii) additional evidence to be provided in written form obtained through prompt, limited discovery focused on the issues addressed herein. The NAACP also respectfully submit that oral argument may be useful to the Court.

ECF No. 372.

4. Defendants' argument, that the current trial schedule is "unworkable" when combined with preparing for a preliminary injunction hearing, is unpersuasive given the limited scope of both proceedings.

5. First, much of the evidence that the Plaintiffs will present at trial concerns the effects of the voter photo identification provisions as originally enacted, information which was the subject of extensive discovery in the previous round of litigation. In fact, almost all of the witnesses who may be providing testimony for the United States at trial have already been deposed in this case. Moreover, for those witnesses who have been deposed, the scope of any testimony they would provide would be limited to the topics already covered in their existing depositions.

6. Second, the Court and the parties anticipate a truncated trial, limited in duration and scope. The trial will last no more than four days, and the subject matter is limited to the voter photo identification provisions. ECF No. 368.

7. Third, the NAACP Plaintiffs are not requesting an evidentiary hearing on their motion for a preliminary injunction, but are merely asking this Court to rule on the basis of written evidence either already in the record or attached to the motion and a limited amount of written information obtained through prompt, limited, and focused discovery. Consequently, there is no reason to believe that the preliminary injunction motion will significantly complicate Defendants' ability to prepare for a short trial in January.

8. Defendants suggest that the NAACP Plaintiffs' request for a preliminary injunction eliminates the need for an efficient trial schedule. However, only a trial will enable the Court to finally close the record on this case, a necessary precursor to providing North Carolina's voters with finality as to the status of the photo identification provision. Indeed, this Court has emphasized the importance of avoiding unnecessary delay and bringing this case to a close as rapidly as possible. At the last hearing, the Court stated, "My default position is, that both sides have had lots of time to deal with this, and that I'm not going to be inclined to grant lots of extensions." The Court explained, "The voters of this State are looking for you all to resolve this in a way that gives them notice of what is going on...." (Hearing, Tr. 67-68, Oct. 23, 2015)

9. The January trial schedule not only serves to submit this matter to the Court prior to North Carolina's March 15, 2016 primary election, it also provides time for fully resolving any appeals prior to the next general election in November 2016. As the preliminary injunction proceedings in this case held prior to the 2014 general election demonstrate, any further delay jeopardizes the chance of achieving a full and final resolution that is timely for this election cycle. *See North Carolina v. League of Women Voters of N.C.*, 135 S. Ct. 6 (2014) (summarily staying preliminary injunction issued following July 2014 hearing).

10. Finally, the preliminary injunction hearing does not eliminate the need for expeditiously moving ahead with the trial because the two proceedings likely will be focusing on different issues. Based on the NAACP Plaintiffs' filings, it appears that the focus of the NAACP Plaintiffs' preliminary injunction motion will be the State's implementation of the reasonable impediment provision and other issues related to the effect of the photo identification provision as recently amended. These issues will not be the focus of the United States' case at trial. Rather, the United States' primary focus will be the discriminatory effect of HB 589's photo identification provision as originally enacted and the State's awareness of its discriminatory effect at the time of enactment, all of which supports the United States' contention that Defendants acted with a racially discriminatory purpose.

11. For the above stated reasons, the United States respectfully requests that this Court deny Defendants' request to further delay proceedings. The voters of North Carolina deserve no less.

Dated: November 26, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2015, I served the foregoing **United States' Response to Defendants' Objections to the Trial Date and Pretrial Schedule** upon all counsel of record by electronic mail, with the consent of the parties:

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