

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' MOTION TO RESCHEDULE TRIAL

Defendants hereby 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 support of this 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”). The League of Women Voters of North Carolina and the North Carolina A. Philip Randolph Institute are two of the plaintiffs in case number 1:13-cv-660, and are represented by the Southern Coalition for Social Justice.
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 to 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 have opposed 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 continuance of the trial.
9. Despite their opposition to rescheduling the trial in the instant cases, counsel for the League of Women Voters of North Carolina and the North Carolina A. Philip Randolph Institute, over objections by Defendants and their counsel, have successfully requested the court in a related State court case to schedule the trial in that case for July 13, 2015.
10. On August 13, 2013, a case captioned *Alberta Currie, Paris Vaughn, Cassandra Perkins, Mary Caitlyn Sanders, Hayley Farless, League of Women Voters of North Carolina and North Carolina A. Philip Randolph Institute Inc. v. The State of North Carolina, and the North Carolina State Board of Elections*, 13 CVS 1419, was filed in Orange County Superior Court (“the State case”). An amended complaint was filed on October 8, 2013, and an answer was filed on November 12, 2013.
11. The State case raises challenges under the North Carolina Constitution to the provisions of N.C. Session Law 2013-381 which require voters to present photo identification in order to vote in person.
12. The Southern Coalition for Social Justice represents all plaintiffs in the State case. Three of the four attorneys listed as counsel of record for Plaintiffs in the

State case are also counsel of record in one of the federal cases, 1:13-cv-660. The Defendants in the State case are represented by the same attorneys who represent Defendants in the federal cases, with the exception of Karl S. Bowers, Jr., and Robert C. Stephens.

13. There was no activity in the State case until September of 2014, approximately one year after the complaint was filed. On September 16, 2014, plaintiffs in the State case filed a Motion for Judicial Conference and requested entry of a scheduling order in that case.
14. A judicial conference was held in the State case on November 21, 2014. At that conference, Plaintiffs in the State case, including the League of Women Voters of North Carolina and the North Carolina A. Philip Randolph Institute, requested that the trial in the State case be scheduled for July 13, 2015.
15. Defendants requested that, because the federal cases were already on a July 2015 trial calendar, the trial in the State case be scheduled in October 2015. Plaintiffs opposed this request. The judge in the State case, knowing that the instant cases were on a July 2015 trial calendar, set the State case for trial on July 13, 2015, the date requested by Plaintiffs.
16. Even if the trials in the instant cases and the State case do not ultimately overlap in specific dates, Defendants will be severely prejudiced by having two trials of this magnitude and complexity scheduled during the same six-week period. This prejudice will be the direct result of the actions of counsel for Plaintiffs in the State case requesting that the trial in that case be set during the

same time period as this Court scheduled the federal cases for trial in December, 2013.

17. Counsel for Plaintiffs have indicated to counsel for Defendants that they oppose any rescheduling of the trial date in the federal cases.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the trial in the instant cases be moved to a later calendar.

This, the 3rd day of December, 2014.

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*appearing pursuant to Local Rule 83.1(d)

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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:

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This, the 3rd day of December, 2014.

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