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 Governor of North Carolina, et al., Defendants.	**Case No. 1:13CV658**
LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, et al., Plaintiffs, v. THE STATE OF NORTH CAROLINA, et al., Defendants.	**Case No. 1:13CV660**
UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF NORTH CAROLINA, et al., Defendants.	**Case No. 1:13CV861** **RESPONSE TO MOTION TO RESCHEDULE TRIAL AND REPLY TO OPPOSITION TO MODIFY DISCOVERY DEADLINES**

Plaintiffs and Intervenors in Case No. 1:13-CV-660 (hereinafter, "Plaintiffs") hereby respond to Defendants' Motion to Reschedule Trial ("Motion") and request that the Court deny the motion to delay the trial in this matter. Defendants' Motion is another step in Defendants continued attempts to delay the ultimate resolution of this action and is inconsistent with Defendants' prior positions in this action. In support thereof, Plaintiffs respond as follows:

Defendants' assertions that having trials that are not spaced months apart somehow prejudices Defendants' ability to try the cases are simply not credible. If the state demanded three months in between trials in which it was being sued, no litigation challenging state laws would ever be resolved in a timely fashion. In any area of law, attorneys may have matters that are scheduled to go to trial in close proximity. The wheels of justice cannot grind to a near halt because attorneys might need to work long hours. Defendants in this action are being represented by two large law firms—the Attorney General's Office and Ogletree Deakins. It would be a discredit to both institutions to believe they cannot manage both cases.

Defendants' implication that the "conduct of certain counsel for Plaintiffs," Defs.' Mot. 2, justifies delaying this trial several additional months is not only unsupportable as a matter of law or practice, but their Motion paints a deeply disingenuous picture of the state proceedings. Defendants are correct that the Southern Coalition for Social Justice, which represents the League of Women

Voters Plaintiffs in this action, is counsel to clients[1] in an Orange County Superior Court matter, 13-CVS-1419, *Currie, et al v. N.C., et al*. ("*Currie*") that challenges only the photo identification requirements of H.B. 589, pursuant to purely state constitutional law claims.[2] At a judicial conference on November 21, 2014 in *Currie*, Defendants argued a mirrored position for a trial in October 2015 in that case while the plaintiffs' counsel argued for a trial the week of July 13, 2015, in a legitimate effort to ensure that their clients' state constitutional claims were litigated in a timely and efficient manner. The plaintiffs' counsel represented to the *Currie* court that they expected that the state trial would last one week. The plaintiffs' counsel also accurately represented to the *Currie* court that most counsel were also involved in a federal lawsuit in the Middle District that was on a six-week trial calendar beginning in July 2015. Counsel for the plaintiffs articulated for the Currie court several reasons why a July 2015 trial date was reasonable and appropriate, none of which Defendants recounted in their Motion to this Court.

Specifically the plaintiffs in *Currie* argued that a trial in July 2015 was reasonable due to the parties' agreement that any discovery conducted in the federal lawsuit can be used for discovery and trial purposes in the state action subject to entry of appropriate protective orders and the resolution of any

[1] Two out of seven clients in the state case are clients in the instant action.

[2] The state constitutional claims include alleged violations of Article VI, § 1; Article I, § 10; Article 1, § 11, and violations of Article 1, § 19 of the North Carolina State Constitution.

objections which are all preserved. Thus, Defendants' argument to this Court that the plaintiffs were somehow dilatory in the state matter is simply false. The parties' agreement of sharing discovery in the *Currie* matter will result in less discovery and greater efficiency in the state case's one week trial period. Defendants also failed to include in their Motion that the plaintiffs in *Currie* repeatedly argued on November 21st that much of the relevant discovery in the *Currie* case relied upon the determination of the number of North Carolina registered voters that do not have acceptable forms of identification pursuant to H.B. 589. That determination required the state to produce certain databases to the United States Plaintiff in the federal case, who then would arrange for a matching analysis between state and federal databases. The matching analyses are in the process of being completed, and analysis is not yet complete in significant part because of Defendants' consistent delay. The state court ultimately agreed with the plaintiffs' counsel in setting the trial for one week on July 13, 2015, finding that there is time within the six week federal court trial calendar for the instant case to still be tried in a complete and efficient manner, and ultimately that it was the interest of all to promptly resolve the issues at stake in this litigation.

Defendants' continued attempts to delay trial in this matter (and their failed attempts in the state matter) are completely contrary to Defendants' representations to the Fourth Circuit in its brief and oral argument as to the danger in a court

issuing a decision affecting election laws too close to the date of the upcoming election. "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." *Brief of Appellees*, Doc. 56, 14-1845, at Pg. 5. "The Supreme Court in the *Purcell* case in 2006 noted that there is a particularly high hurtle [sic] that needs to be considered when election laws are at issue, because the closer we get to an election, the more likelihood there is that changing the rules can cause voter confusion." *Defendants Fourth Circuit Oral Argument*, 44:45-45:07, available at: http://coop.ca4.uscourts.gov/OAarchive/mp3/14-1845-20140925.mp3.

Defendants argue to this Court that a delayed trial period is appropriate while arguing to the Fourth Circuit that decisions changing election laws close to an election are dangerous, cause voter confusion, and may be contrary to Supreme Court precedent. As stated previously, this lawsuit likely will be appealed by either party, and likely in the state court matter as well. The plaintiffs in both matters have a right to present their constitutional claims in a reasonable and timely manner. A July master calendar trial date in this action and the one-week July state court trial date are reasonable and appropriate due to the likelihood of appellate orders prior to presidential preference primary, which will likely take place on March 1, 2016, or as early as January or February 2016. The Presidential

preference primary is also primary when the photo identification requirement is scheduled to take effect. *See* Doc. 206, at ¶ 6a.

Additionally, Plaintiffs have no objection to the use of discovery and testimony from the preliminary injunction hearing being incorporated for the trial in the instant action, which will also increase the efficiency of this action at trial. There is simply no need to reinvent the wheel—the substantial evidence already developed in this case need not be replicated again during the July 2015 trial.

Finally, Defendants' argument that a one-week state court case somehow prevents full adjudication of this action during a six week trial period fails to take into account how this Court, in scheduling the preliminary injunction hearing for a date certain during the July 2014 master calendar, also took into account scheduling issues of counsel and made reasonable accommodations[3].

In sum, this Court should not prejudice Plaintiffs for wanting to fully adjudicate their claims ahead of the March 2016 primary. Plaintiffs' position is consistent with their desire to defend their constitutional principles in a full and timely manner. Defendants' argument fails for the above reasons and this Court should deny Defendants Motion in full. Plaintiffs are more than willing to work on

[3] For example, the United States and counsel for the League of Women Voters were in trial in Texas during the July 2014 master calendar period that the preliminary injunction hearing was originally scheduled for and this Court accommodated counsel by setting the preliminary injunction hearing for a date certain prior to the Texas trial date, but still within the July 2014 master calendar period.

adjusting their proposed discovery deadlines in any way this Court sees fit and so as to minimize the pre-trial burdens on all the parties, but Defendants rejected any discussion of change to discovery deadlines that was not accompanied by a change in trial date.

WHEREFORE, Plaintiffs respectfully pray that the Court deny Defendants Motion to Reschedule Trial and keep trial in this action on the July 2015 master calendar and grant Plaintiffs' Motion to Modify Discovery Deadlines.

Dated: December 4, 2014

Respectfully submitted,

By: */s/ George E. Eppsteiner*

Laughlin McDonald*
ACLU Voting Rights Project
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
(404) 500-1235
lmcdonald@aclu.org
* *appearing pursuant to Local Rule 83.1(d)*

Christopher Brook (State Bar #33838) ACLU of North Carolina Legal Foundation
P.O. Box 28004
Raleigh, NC 27611-8004
Telephone: 919-834-3466
Facsimile: 866-511-1344
E-mail: cbrook@acluofnc.org

Anita S. Earls (State Bar # 15597)
Allison J. Riggs (State Bar # 40028)
George E. Eppsteiner (State Bar #42812)
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380 ext. 115
Facsimile: 919-323-3942
E-mail: anita@southerncoalition.org

Dale Ho*
Julie A. Ebenstein*
ACLU Voting Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2693
dale.ho@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Attorneys for LWV Plaintiffs

/s/ Marc E. Elias
Marc E. Elias
MElias@perkinscoie.com
Elisabeth C. Frost
EFrost@perkinscoie.com
PERKINS COIE LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211

Joshua L. Kaul
JKaul@perkinscoie.com
PERKINS COIE LLP
1 East Main Street, Suite 201
Madison, WI 53705
Telephone: (608) 294-4007
Facsimile: (608) 663-7499

Edwin M. Speas, Jr.
N.C. State Bar No. 4112
John W. O'Hale
johale@poynerspruill.com
Caroline P. Mackie
cmackie@poynerspruill.com
POYNER SPRUILL LLP
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
Telephone: (919) 783-6400
Facsimile: (919) 783-1075

Counsel for Duke Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2014, I served the foregoing Response to Motion to Reset Trial Date and Reply to Defendants' Opposition to Motion to Modify Discovery Deadlines with the Clerk of Court using the CM/ECF system in case numbers 1:13-cv-658, 1:13-cv-660, and 1:13-cv-861, which on the same date sent notification of the filing to the following:

Counsel for Plaintiffs

Adam Stein
TIN FULTON WALKER & OWEN, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Telephone: (919) 240-7089
Facsimile: (919) 240-7822
Email: astein@tinfulton.com

Penda D. Hair
Edward A. Hailes
Denise Lieberman
Donita Judge
Caitlin Swain
ADVANCEMENT PROJECT
Suite 850
1220 L Street, N.W.
Washington, DC 20005
Telephone: (202) 728-9557
Email: phair@advancementproject.com

Daniel T. Donovan
Thomas D. Yannucci
Susan M. Davies
Bridget K. O'Connor
K. Winn Allen
Uzoma Nkwonta
Kimberly D. Rancour
Jodi Wu
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
Telephone: (202) 879-5174
Facsimile: (202) 879-5200
E-mail: daniel.donovan@kirkland.com

Irving Joyner, Esq.
PO Box 374
Cary, NC 27512
Email: ijoyner@nccu.edu

Counsel for Plaintiffs in League of Women Voters of North Carolina, et al. v. North Carolina, et al.

Anita S. Earls (State Bar # 15597)
Allison J. Riggs (State Bar # 40028)

George E. Eppsteiner
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: (919) 323-3380 ext. 115
Facsimile: (919) 323-3942
E-mail: anita@southerncoalition.org

Christopher Brook (State Bar #33838)
ACLU of NORTH CAROLINA LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611-8004
Telephone: (919) 834-3466
Facsimile: (866) 511-1344
E-mail: cbrook@acluofnc.org

Dale Ho*
Julie A. Ebenstein*
ACLU VOTING RIGHTS PROJECT
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2693
E-mail: dale.ho@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Laughlin McDonald*
ACLU VOTING RIGHTS PROJECT
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
Telephone: (404) 500-1235
E-mail: lmcdonald@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Counsel for Plaintiffs in US v. North Carolina, et al.
T. Christian Herren, Jr.
John A. Russ IV
Catherine Meza
David G. Cooper
Spencer R. Fisher
Elizabeth Ryan
Attorneys, Voting Section
Civil Rights Division
U.S. DEPARTMENT OF JUSTICE
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (800) 253-3931
Facsimile: (202) 307-3961
E-mail: john.russ@usdoj.gov
E-mail: catherine.meza@usdoj.gov

Gill P. Beck (State Bar # 13175)
Special Assistant United States Attorney
OFFICE OF THE UNITED STATES ATTORNEY
United States Courthouse
100 Otis Street
Asheville, NC 28801
Telephone: (828) 259-0645
E-mail: gill.beck@usdoj.gov

Counsel for Defendant Patrick McCrory
Karl S. Bowers, Jr.
BOWERS LAW OFFICE LLC
P.O. Box 50549
Columbia, SC 29250
Telephone: (803) 260-4124
Facsimile: (803) 250-3985
E-mail: butch@butchbowers.com

Robert C. Stephens
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
Of Counsel

Counsel for Defendants State of North Carolina and Members of the State Board of Elections
Alexander Peters, Esq.
NC DEPARTMENT OF JUSTICE
PO Box 629
Raleigh, NC 27602
Telephone: (919) 716-6913
Facsimile: (919) 716-6763
E-mail: apeters@ncdoj.gov

Thomas A. Farr, Esq.
Phillip J. Strach, Esq.
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C
4208 Six Forks Road
Raleigh, NC 27609
Telephone: (919) 787-9700
Facsimile: (919)783-9412
E-mail:
thomas.farr@ogletreedeakins.com
E-mail:
phil.strach@ogletreedeakins.com

Respectfully Submitted,

/s/ George E. Eppsteiner
George E. Eppsteiner