

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WILLIAM WHITFORD, et al.,

Plaintiffs,

v.

15-CV-421-jdp

BEVERLY R. GILL, et al.,

Defendants.

THE WISCONSIN ASSEMBLY
DEMOCRATIC CAMPAIGN COMMITTEE,

Plaintiff,

v.

18-cv-763-jdp

BEVERLY R. GILL, et al.,

Defendants.

**PARTIES' JOINT RULE 26(f) REPORT
AFTER REMAND FROM THE SUPREME COURT**

The parties, by their undersigned counsel, held a conference pursuant to Rule 26(f) on October 3, 2018. The parties hereby jointly submit the following report consistent with Rules 16 and 26 of the Federal Rules of Civil Procedure.

STATEMENT OF THE CASE

This case involves a challenge to the Wisconsin State Assembly districts enacted following the 2010 census. The plaintiffs are voters who support the Democratic Party who contend that (1) particular districts unlawfully dilute their votes by cracking or packing Democratic voters; and (2) the district plan in its

entirety unlawfully burdens their associational rights. The defendants are members and officials of the Wisconsin Government Accountability Board, in their official capacity, who are responsible for administering Wisconsin election law. This case is on remand from the United States Supreme Court.

RELATED CASES

The Wisconsin Assembly Democratic Campaign Committee v. Gill, et al., W.D. Wis. 18-CV-763. The plaintiff in that case has filed an unopposed motion to consolidate that case with this one. (Dkt. 204.)

ISSUES PRESENTED

As described in plaintiffs' amended complaint, plaintiffs believe there are two issues in this case: (1) whether particular Assembly districts unlawfully dilute plaintiffs' votes by cracking or packing Democratic voters; and (2) whether the Assembly map in its entirety unlawfully burdens plaintiffs' associational rights. With respect to the first issue, the only points that remain unresolved in the wake of the Supreme Court's remand are in which districts plaintiffs have standing and whether defendants intentionally cracked or packed these districts. All other factual findings and legal conclusions relating to this issue were unaffected by the Supreme Court's decision, and thus cannot now be reopened. With respect to the second issue, the only outstanding point is whether, and to what extent, the Assembly map as a whole burdens plaintiffs' associational rights. It is already clear from factual findings and legal conclusions that cannot now be relitigated that if an associational burden exists, it cannot be legitimately justified.

The Assembly Democratic Campaign Committee (ADCC) brings only an associational claim; its case thus presents only the second issue discussed above. An additional point implicated by the ADCC's claim is how the associational burden imposed by a partisan gerrymander should be evaluated when the plaintiff is a partisan entity rather than a group of individual voters.

Defendants contend that the primary issue is whether there is a judicially manageable and/or judicially discernible legal standard for deciding the plaintiffs' claims. As of now, there is no legal standard for measuring an allegedly unconstitutional diluting of a plaintiff's vote in a legislative election or how the districting plan for one house of a state legislature burdens the First Amendment right to associate for expressive purposes. Assuming such a standard is found, the issue in the vote-dilution claims would be a district-specific inquiry into whether the plaintiffs' individual votes were unconstitutionally diluted under this yet-to-be determined standard. Defendants disagree that the Supreme Court's vacatur of this Court's earlier decision somehow approved of this Court's factual findings and legal conclusions or even left them intact. The issue in the First Amendment claim would be whether a districting plan for one house of a state legislature even implicates the First Amendment right to associate for expressive activities and, if so, whether Act 43 violates the plaintiffs' right to associate under this yet-to-be determined standard.

AMENDMENTS TO PLEADINGS AND NEW PARTIES

The parties do not expect there to be any further amendments to the pleadings or additional parties.

DISCOVERY PLAN

(A) The original twelve plaintiffs and the defendants in 15-cv-421-jdp supplemented their initial disclosures in accordance with Fed. R. Civ. P. 26(e) on September 28, 2018. The 28 newly joined plaintiffs in 15-cv-421-jdp served their initial disclosures in accordance with Fed. R. Civ. P. 26(a)(1)(A) and the Court's August 16, 2018 order (dkt. #199) on the same date. The ADCC served its initial disclosures in 18-cv-763-jdp in accordance with Fed. R. Civ. P. 26(a)(1)(A) on the same date. The parties are in agreement that the defendants' supplemental disclosures in 15-cv-421-jdp shall satisfy the defendants' initial disclosure obligations under Fed. R. 26(a)(1)(A) in 18-cv-763-jdp.

(B) Topics of discovery.

Given the voluminous evidence developed by the parties and admitted by the Court in the trial of 15-cv-421-jdp in May 2016, and the substantial record already before the Court in the remand of that action, the parties to 15-cv-421-jdp agree to limit the topics of discovery to evidence related to the standing of the plaintiffs to bring their claims and other evidence that is not yet a part of the existing record. At this time, assuming that the cases are consolidated, the ADCC does not anticipate seeking any discovery from the Defendants in 18-cv-763-jdp.

The defendants believe substantial discovery will be necessary because the complaint in 15-cv-421-jdp now includes the claims of 40 plaintiffs, all of whom make individual claims of harm related to either alleged dilution of their votes and/or alleged burdens on their associational rights. The defendants will require written discovery and likely depositions of those plaintiffs. The defendants also intend to take

discovery of any experts retained by the plaintiffs who submit new or supplemental expert reports. In addition, if this Court were to grant the pending motion to consolidate these cases, additional discovery will be necessary, as the complaint in 18-cv-763-jdp alleges organization-based harm and alludes to financial and other data that will be the subject of written discovery and depositions, along with other factual allegations made in that complaint.

(C) ESI. The parties will cooperate in arranging the exchange of documents, experts' reports, analyses, and data in appropriate formats, consistent with the parties' previous practices to date in this action.

(D) The parties do not anticipate any issues regarding claims of privilege or trial-preparation materials beyond those normally encountered that would be handled as addressed in the Federal Rules.

(E) The parties agree that the defendants are permitted to depose and serve 25 interrogatories on each plaintiff without leave of Court. In addition to the depositions and written discovery of the plaintiffs in both actions, the parties anticipate taking no more than five depositions of non-parties for each side (five for plaintiffs in both 15-cv-421-jdp and 18-cv-763-jdp as a group, and five for defendants in the same actions as a group). The parties have agreed that they will work cooperatively to accommodate any party's reasonable need for additional non-party depositions beyond the five for each side as a group.

ESTIMATED TRIAL LENGTH

The parties estimate that a consolidated trial of both actions will take four trial days.

PROPOSED SCHEDULE

Plaintiffs' counsel in both actions believe that a trial should occur no later than March 2019 so that the Court may issue an opinion that will allow an appeal to be heard by the United States Supreme Court in its 2019-2020 term. Plaintiffs believe this is reasonable given the scope of the mandate on remand.

Defendants request a trial date no sooner than mid-June 2019, with a summary judgment date three months in advance of the trial date. Especially in light of the addition of dozens of individual plaintiffs and, potentially, a second lawsuit, technical allegations, and what appears to be a new legal associational theory, defendants request 60 days to disclose an expert after receiving plaintiffs' report, and that discovery be left open until 30 days before a trial in June 2019 or later, to allow for written discovery and likely dozens or more depositions of the plaintiffs and the representatives of the organization in the new lawsuit.

The parties propose the following schedules:

Event	Plaintiffs' Proposed Date	Defendants' Proposed Date
Deadline to Amend Pleadings	Filed September 14, 2018	Filed September 14, 2018
Rule 26(a)(1) Initial Disclosures	Filed September 28, 2018	Filed September 28, 2018
Plaintiffs' expert report deadline	October 15, 2018	October 15, 2018
Defendants' expert report deadline	December 3, 2018	December 17, 2018
Plaintiffs' Rebuttal report deadline	December 31, 2019	January 15, 2019
Defendants' rebuttal report	January 22, 2019	February 5, 2019
Dispositive motion filing deadline	January 31, 2019, 2018	March 15, 2019

Fact Discovery Cut-Off	January 31, 2019	May 15, 2019
Commencement of additional trial days	March 4, 2019	June 17, 2019

Dated: October 5, 2018

Respectfully submitted,

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