

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

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WAKE COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 014001

COMMON CAUSE, et al.,

BY 

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

**MOTION FOR EXPEDITED
DISCOVERY AND TRIAL
AND
FOR CASE MANAGEMENT
ORDER**

(OTHR)

NOW COME Plaintiffs Common Cause, the North Carolina Democratic Party, and 22 North Carolina registered voters, pursuant to Rule 26(d) of the North Carolina Rules of Civil Procedure, and move the Court for leave to conduct expedited discovery, and for the Court to enter a Discovery Scheduling Order and Case Management Order establishing a schedule for expedited discovery, motions practice, and trial. In support thereof, Plaintiffs state as follows:

1. In this action, Plaintiffs challenge the redistricting plans enacted by the North Carolina General Assembly in 2017 for the state House of Representatives and state Senate (the "2017 Plans"). Defendants are the chairmen of the state House and state Senate redistricting committees, the Speaker of the state House, the President Pro Tempore of the state Senate, the State itself, and the State Board of Elections and Ethics Enforcement and its members. Plaintiffs allege that the 2017 Plans constitute illegal partisan gerrymanders in violation of the North Carolina Constitution's Equal Protection Clause, Free Elections Clause, and Freedom of Speech and Freedom of Assembly Clauses. Plaintiffs seek a declaration that the 2017 Plans are unlawful, an injunction barring use of the 2017 Plans in the 2020 primary and general elections,

and the establishment of new plans that comply with the North Carolina Constitution in time for those 2020 elections.

2. It is in the overwhelming interest of both the parties and the public to resolve this case as expeditiously as possible to ensure that, if the 2017 Plans are found unconstitutional, there is sufficient time to establish new, lawful districts for the 2020 primary and general elections. In nearly every state and federal legislative election held in North Carolina this decade, voters have been forced to cast their ballots in districts ruled unconstitutional by the courts. In 2012 and 2014, North Carolinians voted in dozens of racially gerrymandered state House and Senate districts under one the “most widespread racial gerrymanders ever encountered by a federal court.” *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 943 (M.D.N.C. 2018). Even when a federal court declared these districts unconstitutional in August 2016, there was “insufficient time” to implement new districts for the 2016 elections, so voters again had to vote in these unlawful districts. *Covington v. North Carolina*, 316 F.R.D. 176, 176-77 (M.D.N.C. 2016), *aff’d* 137 S. Ct. 2211 (2017). Similarly, North Carolina’s congressional elections in 2012 and 2014 also were conducted under unconstitutional racially gerrymandered districts. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016), *aff’d sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017). And the replacement plan that the General Assembly adopted, which governed the 2016 and 2018 congressional elections, has itself been found to be an unconstitutional partisan gerrymander. *Common Cause*, 318 F. Supp. 3d 777.

3. The citizens of North Carolina should not bear the risk of once again being forced to vote in districts that violate their constitutional rights. That is especially true for the 2020 state

legislative elections, since the state representatives elected in 2020 will be the ones who, in 2021, will redraw North Carolina's state legislative and congressional districts for the next decade.

4. Deadlines relating to the 2020 elections are quickly approaching. Indeed, the General Assembly recently moved up the candidate filing period and the primary date. The window for candidates to file for party primary nominations is now scheduled to open on December 2, 2019, and primary elections are now scheduled to be held on March 3, 2020. *See* 2017 N.C. Sess. Laws S.L. 2018-21 (S.B. 655). As a result of these recent changes, North Carolina will have one of the earliest primaries in the country in 2020.

5. To promote a timely resolution of this case and ensure there is sufficient time for a remedial process before the 2020 elections should Plaintiffs prevail, Plaintiffs have effectuated prompt service on Defendants and served written discovery requests with the Complaint. Plaintiffs now propose the following deadlines and procedures relating to pleadings, procedures, discovery, motions practice, and trial:

- All pleadings, motions, briefs, discovery requests, and discovery responses shall be served by e-mail. Depositions may be taken upon 10 days' notice.
- Plaintiffs shall file an amended complaint no later than December 7, 2018. The amended complaint will make limited substantive changes to the original complaint; the primary differences will be to add new voter plaintiffs, update factual information regarding the results of the recent 2018 elections, and add allegations relating to the Wake County state House districts in light of the recent summary judgment decision in *N.C. State Conference of NAACP Branches v. Lewis*, 18 CVS 2322 (N.C. Super.).
- Defendants shall file any motion(s) to dismiss and brief(s) in support no later than December 21, 2018. This affords Defendants more than five weeks from the filing of Plaintiffs' initial complaint and two weeks from the filing of Plaintiffs' amended complaint, which will make only limited changes as described above. Plaintiffs shall file any opposition to any motion(s) to dismiss no later than January 11, 2019, and Defendants shall file any reply(ies) no later than January 25, 2019.
- All document and written discovery shall be completed no later than January 31, 2019. The parties by agreement may continue document or written discovery beyond

this deadline, but the Court will not intervene in this voluntary process except in extraordinary circumstances, and the trial date will not be modified because of information obtained through this voluntary process.

- Expert reports shall be served no later than February 15, 2019. Those reports shall include the information stated in Rule 26(b)(4)(A)(2) of the North Carolina Rules of Civil Procedure. Rebuttal expert reports shall be served no later than March 1, 2019. Reply expert reports shall be served no later than March 8, 2019.
- No later than March 8, 2019, the parties shall file a joint proposal to establish deadlines for the exchange of witness lists, exhibit lists, and deposition designations, and for submitting to the Court a joint pre-trial stipulation of facts. On any deadline where the parties cannot agree, they may each describe their respective positions.
- All discovery shall be completed no later than March 29, 2019, and any discovery-related disputes will be heard on an expedited basis and, to the extent reasonable and appropriate, upon notice of less than five days.
- Plaintiffs do not anticipate that this case will be appropriate for summary judgment. If either party desires to file a motion for summary judgment, however, the motion and brief in support shall be filed no later than April 1, 2019. Any opposition shall be filed no later than April 8, 2019.
- Motions in limine and briefs in support shall be filed no later than April 3, 2019. Any oppositions shall be filed no later than April 10, 2019.
- Trial will begin April 15, 2019.
- Plaintiffs and Defendants shall each file their respective proposed findings of fact and conclusions of law seven days after the close of trial.

6. Plaintiffs propose this schedule in order to enable a final decision by this Court, appellate review, and a remedial process in advance of the 2020 elections. In addition to the time for appellate review, the remedial process likely would involve multiple steps. The General Assembly likely would be afforded time to propose remedial plans, the parties likely would be afforded an opportunity to comment on the proposed remedial plans, and the courts (potentially with the assistance of a special master) would need time to review the proposed remedial plans and any comments on them. If the courts find that any proposed remedial plans do not cure the

and any comments on them. If the courts find that any proposed remedial plans do not cure the constitutional violations, the courts would need time to develop (and receive comments on) new remedial plans to cure those violations. All of these steps would need to be completed sufficiently in advance of the candidate filing period for party primary nominations, which, as stated, is scheduled to begin December 2, 2019. The expedited schedule that Plaintiffs propose here will ensure that this is feasible.

7. Plaintiffs believe that the schedule proposed above is reasonable given that most of the factual evidence in this case will consist of public records generated by Defendants themselves. The proposed schedule is also consistent with the schedule followed in other redistricting cases in North Carolina and elsewhere. The proposed schedule is far less compressed than that adopted in *Stephenson v. Bartlett*, 562 S.E.2d 377, 382 (N.C. 2002), where the Superior Court and then the state Supreme Court struck down the state's legislative districts under the North Carolina Constitution. In *Stephenson*, the plaintiffs filed suit on November 13, 2001, and the trial court granted the plaintiffs' motion for summary judgment following discovery on February 20, 2002, just over three months after the complaint was filed. *Id.* at 382. Here, Plaintiffs seek to have trial conclude more than five months after filing suit, with a decision from this Court shortly thereafter—twice as much time as was allotted in *Stephenson*. Plaintiffs' proposed schedule here also aligns with that in other recent partisan gerrymandering challenges. For instance, in a partisan gerrymandering challenge to Pennsylvania's congressional districts last year, the trial court entered its recommended findings of fact and conclusions of law following trial just over six months after the plaintiffs filed suit. *League of Women Voters v. Commonwealth*, 178 A.3d 737, 766-67 (Pa. 2018).

WHEREFORE, Plaintiffs request that the Court enter an order providing for expedited discovery, motions practice, and trial, consistent with the deadlines and procedures set out above.

Respectfully submitted this the 20th day of November, 2018.

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* *Pro hac vice motions forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing *by email and by U.S. mail*, addressed to the following persons at the following addresses which are the last addresses known to me:

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This the 20th day of November, 2018.

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