

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEORGIA STATE CONFERENCE OF
THE NAACP, as an organization;
LAVELLE LEMON, MARLON REID,
LAURETHA CELESTE SIMS,
PATRICIA SMITH, COLEY TYSON,

NAACP Plaintiffs,

AUSTIN THOMPSON, WAYNE
SWANSON, DARRYL PAYTON,
AUDRA CUNNINGHAM, SABRINA
MCKENZIE, JAMIDA ORANGE,
ANDREA SNOW, SAMMY ARREY-
MBI, LYNNE ANDERSON,
CORETTA JACKSON,

Thompson Plaintiffs,

v.

BRIAN KEMP, in his official capacity
as Secretary of the State for the State of
Georgia

Defendant.

CA No. 1:17-cv-01427-TCB-WSD-
BBM

**MOTION FOR EXPEDITED ENTRY OF PLAINTIFFS' PROPOSED
SCHEDULING ORDER AND MEMORANDUM IN SUPPORT**

The Georgia State Conference of the NAACP, Lavelle Lemon, Marlon Reid,
Lauretha Celeste Sims, Patricia Smith, and Coley Tyson (the "GA NAACP

Plaintiffs”), along with Austin Thompson, Wayne Swanson, Darryl Payton, Audra Cunningham, Sabrina McKenzie, Jamida Orange, Andrea Snow, Sammy Arrey-Mbi, Lynne Anderson; and Coretta Jackson (the “Thompson Plaintiffs”) respectfully request that this Court enter the attached scheduling order on an expedited basis, so that this case can move forward, and the GA NAACP Plaintiffs’ claims can be heard. In support of this motion, the GA NAACP Plaintiffs show the Court the following:

1. This case was originally filed by the GA NAACP Plaintiffs on April 24, 2017, challenging the redistricting of certain state legislative districts by the State of Georgia on the grounds that the methods used by the State constitute improper partisan and racial gerrymandering. Currently, the GA NAACP Plaintiffs’ claims based on racial gerrymandering continue in this action.

2. Shortly after the case was filed, the GA NAACP Plaintiffs reached out to the Court to request an accelerated pretrial discovery period and trial setting. The request for an accelerated discovery period and trial was based upon the need to have a resolution of the issues in this case by Court, if at all possible, well before the onset of the election cycle in 2018. Qualifying for the election is expected in mid-March of 2018, the Primary is to be held on May 22, 2018, and the General Election is to be held on November 26, 2018. In light of those

impending deadlines set by law, the GA NAACP Plaintiffs originally requested that the trial of this matter occur prior to the end of 2017.

3. On September 29, 2017, this Court entered a scheduling order that provided for a four month discovery period. [ECF Doc. No. 29]. While the scheduling order did not allow for a trial of this matter to be completed in 2017, it did allow for considerable movement forward so that briefing on all issues, including dispositive motions such as an anticipated preliminary injunction motion, could conclude prior to the scheduled Primary. As the Court is aware, however, that schedule has stalled.

4. The *Thompson v. Kemp*, 1:17-cv-3856-TCB matter (the “Thompson Action”) was filed in this Court, and the Defendant filed a motion for consolidation of the Thompson Action with the instant action on October 6, 2017. After the Defendant filed the motion to consolidate, discovery on the racial gerrymandering claims in this action was put on hold while the decision on that motion was pending. On November 1, 2017, this Court ordered that all pre-trial matters in this case be consolidated with the Thompson Action. [ECF Doc. No. 46]. In its Order, the Court noted that the GA NAACP Plaintiffs in this action “agree that some form of consolidation may be appropriate, and ***only request that such consolidation not delay adjudication of their claims.***” [Id. (emphasis added)].

5. The GA NAACP Plaintiffs, the Thompson Plaintiffs, and Defendant have consulted with each other to attempt to reach a mutually agreeable discovery schedule now that discovery in this matter can proceed. The defendants, however, have proposed a schedule that will do the one thing that the GA NAACP Plaintiffs hoped to avoid – *delay adjudication of their claims*.

6. The GA NAACP Plaintiffs in this action have proposed a discovery schedule that attempts to reflect the original scheduling order entered in this action as much as possible, while taking into consideration that time has passed and we are much closer to the 2018 election cycle. [See GA NAACP Plaintiffs' proposed schedule, attached hereto at Exhibit A]. While this schedule is not ideal, and does not allow for resolution of this matter before qualifying for the election can occur, it at least allows for the GA NAACP Plaintiffs' claims to be addressed earlier in the election cycle, causing less disruption, rather than later.

7. The Thompson Plaintiffs consent to proceed with the litigation of their claims pursuant to the NAACP Plaintiffs' proposed schedule, attached hereto as Exhibit A. In the alternative, the Thompson Plaintiffs would consent to a bifurcated case schedule wherein the Thompson Plaintiffs' and the NAACP Plaintiffs' racial gerrymandering claims are litigated pursuant to the schedule attached hereto in Exhibit A, and the Thompson Plaintiffs' intent claim and Section

2 “results” claim (Counts I and II of the Thompson Plaintiffs’ Complaint), which are subject to Defendant’s motion to dismiss (ECF No. 47), are litigated pursuant to Defendant’s Proposed Schedule (*see* ECF Doc. No. 49).¹

8. The Thompson Plaintiffs share the NAACP Plaintiffs’ position that the claims alleged in both complaints, including the racial gerrymandering claims, get resolved as early as possible in the 2018 Election Cycle. The NAACP Plaintiffs’ position is that the trial schedule for the NAACP Plaintiffs’ case needs to be consistent with the schedule they have submitted.

9. In contrast, the Defendant has proposed a schedule which does not even provide for a definitive end of the discovery period. [See Defendant’s proposed schedule, attached hereto at Exhibit B]. Instead, Defendant contends that the discovery period in the present action should run until 120 days after this Court’s ruling on the motion to dismiss filed in the Thompson Action. This proposal is unacceptable for several reasons, including that: a) there is no reason discovery cannot occur in this action on the racial gerrymandering claim while the

¹ If the Court orders a bifurcated case schedule, then the Thompson Plaintiffs request that either (a) the Thompson Plaintiffs are permitted to depose Defendant’s witnesses on all claims during the depositions held pursuant to the earlier schedule for the racial gerrymandering claims to avoid multiple depositions of each witness, *see* Defendant’s Motion to Consolidate, ECF No. 39 at 4 (“While there are some differences with respect to the additional statutory claims included in the [*Thompson*] complaint that are not included in [the GA NAACP] action, the witnesses and evidence is expected to largely overlap.”); or (b) that Defendant’s witnesses make themselves available for more than one deposition in this action as needed.

Thompson motion to dismiss is being considered; b) the Thompson Plaintiffs consent to the scheduling order proposed in Exhibit A; and c) Defendant's proposed schedule could naturally result in a situation where this Court will be unable to make a decision in this matter until after the 2018 General Election, and the 2019 Special Elections, thus, depriving the GA NAACP Plaintiffs of any meaningful relief and causing unnecessary disruption of the election process.

10. The parties, the public, and the Court will benefit significantly if the GA NAACP Plaintiffs' claims can be addressed and resolved as early as possible in the 2018 election cycle. Accordingly, the GA NAACP Plaintiffs respectfully request that this Court enter the GA NAACP Plaintiffs' attached proposed order on an expedited basis.

Respectfully submitted, this 16th day of November, 2017.

By: /s/ Jennifer B. Dempsey
Jennifer B. Dempsey, Georgia Bar No. 217536
William V. Custer, Georgia Bar No. 202910
Bryan Cave LLP
One Atlantic Center, Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, GA 30309-3488
Telephone: (404) 572-6600
Fax: (404) 572-6999
Email: bill.custer@bryancave.com
jennifer.dempsey@bryancave.com

Bradley S. Phillips (*admitted pro hac vice*)
Gregory D. Phillips (*admitted pro hac vice*)
John F. Muller (*admitted pro hac vice*)
Thomas P. Clancy (*admitted pro hac vice*)
Munger, Tolles, & Olson LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, CA 90071-1560
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Email: Bradley.Phillips@mto.com
Gregory.Phillips@mto.com
John.Muller@mto.com
Thomas.Clancy@mto.com

Jon Greenbaum (*admitted pro hac vice*)
Ezra D. Rosenberg, Esq. (*admitted pro
hac vice*)
Julie Houk, Esq. (*admitted pro hac vice*)
John Powers, Esq. (*admitted pro hac vice*)
Lawyers' Committee for Civil Rights Under
Law
1401 New York Ave., NW, Suite 400
Washington, DC 20005
Telephone: (202) 662-8600
Facsimile: (202) 783-0857
Email: jgreenbaum@lawyerscommittee.org
erosenberg@lawyerscommittee.org
jhouk@lawyerscommittee.org
jpowers@lawyerscommittee.org

Counsel for the GA NAACP Plaintiffs

By /s/ Quinton Washington
Quinton Washington (GA Bar No. 159067)
Bell & Washington LLP
196 Peachtree Street SW, Suite 310

Atlanta, GA 30303
Phone: (404) 437-6641
Email: Quinton@bellwashington.com

Marc Erik Elias (*admitted pro hac vice*)
Aria C. Branch (*admitted pro hac vice*)

Perkins Coie, LLP

700 13th St. N.W., Suite 600
Washington, D.C. 20005-3960
Phone: (202) 654-6338
Fax: (202) 654-9106
Email: MElias@perkinscoie.com
Email: ABranch@perkinscoie.com

Abha Khanna (*admitted pro hac vice*)

Perkins Coie, LLP

1201 Third Avenue, Ste. 4900
Seattle, WA 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000
Email: AKhanna@perkinscoie.com

Counsel for Thompson Plaintiffs

LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE

I certify that this pleading has been prepared with Times New Roman 14 point, as approved by the Court in L.R. 5.1(C), N.D. Ga.

Respectfully submitted, this 16th day of November, 2017.

By: /s/ Jennifer B. Dempsey
Jennifer B. Dempsey, Georgia Bar No. 217536
Bryan Cave LLP
One Atlantic Center, Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, GA 30309-3488
Telephone: (404) 572-6600
Fax: (404) 572-6999
Email: bill.custer@bryancave.com

Counsel for the GA NAACP Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of November, 2017, I filed the foregoing **MOTION FOR EXPEDITED ENTRY OF PLAINTIFFS' PROPOSED SCHEDULING ORDER** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

By: /s/ Jennifer B. Dempsey
Jennifer B. Dempsey, Georgia Bar No. 217536
Bryan Cave LLP
One Atlantic Center, Fourteenth Floor
1201 West Peachtree Street, NW
Atlanta, GA 30309-3488
Telephone: (404) 572-6600
Fax: (404) 572-6999
Email: bill.custer@bryancave.com

Counsel for the GA NAACP Plaintiffs

EXHIBIT A

GA NAACP v. Kemp – Proposal for Resumed Discovery Schedule

| Event | Date per Scheduling Order | Proposed New Dates |
|---|--|---|
| Defendants' response to complaint | September 15, 2017 | Defendants' answer already filed in response to the <i>NAACP</i> plaintiffs; November 10 th to respond to the <i>Brooks</i> plaintiffs |
| Discovery period | September 18, 2017 through and including January 12, 2018 (= 116 days) | Resuming on November 20, 2017, ending on February 16, 2018 (= 88 days) |
| Fact depositions end | N/A | December 8, 2017 |
| Plaintiffs' expert disclosures | October 20, 2017 | December 22, 2017 (14 days after fact depositions end) |
| Defendants' expert disclosures | November 17, 2017 (28 days after opening report) | January 12, 2018 (21 days after plaintiffs' expert disclosures are due) |
| Plaintiffs' rebuttal expert disclosures | December 1, 2017 (14 days after defs.' report) | January 26, 2018 (14 days after defendants' expert disclosures) |
| End of discovery | January 12, 2018 (42 days after rebuttal expert reports are due) | February 16, 2018 |
| Dispositive motions (filed) | February 2, 2018 (21 days after end of discovery) | February 23, 2018 (7 days after end of discovery) |
| Dispositive motions (response) | February 28, 2018 (26 days after dispositive motions are filed) | March 9, 2018 (14 days after dispositive motions are filed) |
| Dispositive motions (reply) | March 9, 2018 (9 days after responsive brief filed) | March 16, 2018 (7 days after responsive brief filed) |
| Consolidated pretrial order and Daubert motions | 30 days after resolution of dispositive motions | 30 days after resolution of dispositive motions |

EXHIBIT B

GA NAACP v. Kemp
Thompson v. Kemp

Proposed Discovery Schedule

1. Status of NAACP: Motion to Dismiss granted, only surviving claim is the racial gerrymandering claim directed at HDs 105 and 111
2. Status of Thompson: Motion to Dismiss filed on November 13, 2017, directed at all claims other than racial gerrymandering of HDs 105 and 111
3. Stay discovery on all claims other than HD 105 and 111 racial gerrymandering claims until ruling on Motion to Dismiss

Initial disclosures due thirty (30) days from entry of this Order.

4. For racial gerrymandering claims, discovery to resume November 20, 2017 and to follow the schedule below:

discovery to resume on Nov. 20, 2017 and runs until 120 days after ruling on Motion to Dismiss

Plaintiffs' expert disclosures 30 days after ruling on MTD

Defendant's expert disclosures 60 days after ruling on MTD

Plaintiffs' expert rebuttal 75 days after ruling on MTD

Discovery ends 120 days after ruling on MTD

Dispositive Motions 28 days after discovery ends

Response 28 days after Dispositive Motion is filed

Reply 14 days after Response

Pretrial Order and Daubert 30 days after ruling on dispositive motions

5. For any Thompson claims other than the racial gerrymandering claim that survive the Motion to Dismiss, follow that schedule as well.