

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

NAACP, <i>et al.</i> ,	*	
	*	
Plaintiffs,	*	
	*	Case No. 1:17-cv-01427-
v.	*	TCB-WSD-BBM
	*	
BRIAN KEMP, in his official capacity	*	CONSOLIDATED CASES
as Secretary of State for the State of	*	
Georgia,	*	
	*	
Defendant.	*	
_____	*	
AUSTIN THOMPSON, <i>et al.</i> ,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
BRIAN KEMP, in his official capacity	*	
as Secretary of State of the State of	*	
Georgia,	*	
	*	
Defendant.	*	

**PROPOSED SCHEDULING ORDER OF DEFENDANT BRIAN KEMP**

Pursuant to this Court’s e-mailed communication from Katie Klimko on November 2, 2017, Brian Kemp, defendant in his official capacity in these cases, submits his scheduling proposal.

Kemp submits his proposal separately because in a conference call on Tuesday, November 14, 2017, the parties were unable to reach agreement on a schedule for proceeding in these cases.

While Kemp believes the proposal set forth below is reasonable, he notes that the pending motion to dismiss the Thompson Plaintiffs' claims in part creates substantial uncertainty until that motion is resolved. An alternative might be to have the parties resubmit scheduling proposals after a ruling on the Motion to Dismiss.

### **Introduction**

1. While these cases have been consolidated, they are not yet in the same procedural posture. Those different procedural postures should be addressed in any scheduling order.

In *NAACP v. Kemp*, this Court dismissed two of the NAACP Plaintiffs' claims, leaving only a racial gerrymandering claim directed at HDs 105 and 111. *See generally NAACP* Doc. 28. The NAACP Plaintiffs have not amended their complaint to restate those claims, so only that racial gerrymandering claim remains for scheduling purposes.

In *Thompson v. Kemp*, the Thompson Plaintiffs make three claims: intentional discrimination directed at H.B. 566; a Section 2 results claim seeking the drawing of a new black-majority district "in the Atlanta metropolitan area;"

and a racial gerrymandering claim directed at HDs 105 and 111. On Monday, November 13, 2017, Kemp filed a Motion to Dismiss the Thompson Plaintiffs' claims in part and a supporting brief. That motion was directed at the Thompson Plaintiffs' intentional discrimination and results claims.

Kemp did not seek to dismiss the Thompson Plaintiffs' racial gerrymandering claim, so those claims are before this Court.

That said, briefing on Kemp's Motion to Dismiss is not complete, and until this Court rules on that Motion, the parties do not know what they will be litigating about.

2. Neither this Court's previous scheduling Order (NAACP Doc. 29) nor the Plaintiffs' proposal allowed for the completion of this case before candidates begin qualifying for the 2018 legislative races. According to the website of the Georgia Secretary of State, qualifying for primary/nonpartisan and independent/political body candidates begins March 5, 2018 and closes at noon on March 9, 2018. *See* [http://sos.ga.gov/index.php/elections/2018\\_elections\\_and\\_voter\\_registration\\_calendar](http://sos.ga.gov/index.php/elections/2018_elections_and_voter_registration_calendar).

The previous scheduling Order set the completion of the briefing of dispositive motions for March 9, 2018, with the submission of the Pretrial Order and *Daubert* motions for 30 days after the resolution of any dispositive motions,

and the Plaintiffs proposed moving it to March 16, 2018. Both of those dates, however, fall after qualification closes.

3. Plaintiffs overlook the effect that the addition of the Thompson Plaintiffs' claims and the uncertainty as to which claims, if any, will survive Kemp's partial motion to dismiss has on scheduling. While Kemp is willing to resume discovery as to the racial gerrymandering claim pending this Court's resolution of the motion to dismiss, the scheduling order should allow sufficient time *after* resolution of Kemp's motion to dismiss for any expert witness discovery.

Kemp is particularly concerned with having sufficient time to engage expert witnesses, if needed, for racially polarized analysis. That analysis is not necessary for a racial gerrymandering claim, but would be required for any Section 2 claim that survives a motion to dismiss.

4. In light of the pending motion to dismiss and the related uncertainty, Kemp believes that discovery on all claims other than those claiming the racial gerrymandering of HDs 105 and 111 should be stayed.

In addition, if any of the Thompson Plaintiffs' claims survive Kemp's Motion to Dismiss, the schedule should allow time for discovery on those claims to catch up. Put differently, if the time allowed for discovery is tied to a ruling on Kemp's Motion to Dismiss, any claims that survive that Motion will already have a place in the schedule.

### **Scheduling Proposal**

Initial Disclosures due 30 days after the entry of a scheduling order;

Discovery to resume on November 20, 2017 and run until 120 days after a ruling on Kemp's Motion to Dismiss ("MTD");

Plaintiffs' expert disclosures due 30 days after ruling on MTD;

Defendant's expert disclosures due 60 days after ruling on MTD;

Plaintiffs' expert rebuttal due 75 days after ruling on MTD;

Discovery ends 120 days after ruling on MTD;<sup>1</sup>

Dispositive Motions due 28 days after discovery ends;

Response to dispositive motions due 28 days after motion filed;

Reply on dispositive motions due 15 days after Response

Consolidated pretrial order and Daubert motions due 30 days after ruling on dispositive motions.

### **Conclusion**

Any claim of urgency by the Plaintiffs is belied by the fact that their claims of racial gerrymandering were ripe in May 2015, when Governor Deal signed H.B. 566.

For all of the reasons set forth above, this Court should adopt the schedule proposed by Defendant Brian Kemp.

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<sup>1</sup> Kemp notes that under this Court's *NAACP* Scheduling Order, 116 days were allowed for discovery.

Respectfully submitted this 16th day of November, 2017.

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## CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing PROPOSED SCHEDULING ORDER OF DEFENDANT BRIAN KEMP has been prepared in Times New Roman 14, a font and type selection approved by the Court in L.R. 5.1(C).

/s/ Frank B. Strickland  
Frank B. Strickland  
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**CERTIFICATE OF SERVICE**

I hereby certify that on November 16, 2017, I served the within and foregoing **Proposed Scheduling Order of Defendant Brian Kemp** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties to this matter via electronic notification or otherwise:

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This 16th day of November, 2017.

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