

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

NAACP, *et al.*,

Plaintiffs,

v.

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

Defendant.

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

CONSOLIDATED CASES

AUSTIN THOMPSON *et al.*,

Plaintiffs,

v.

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

Defendant.

JOINT PRELIMINARY REPORT AND DISCOVERY PLAN

1. Description of Case

(a) Describe briefly the nature of this action.

This is an action to enjoin the Secretary of State from enforcing Act No. 1EX, as amended by Act. No. 277 (“H.B. 829”) and Act. No. 251 (2015 Ga. Laws 1413) (“H.B. 566”). Plaintiffs allege that the current Georgia House of Representatives redistricting plan, as amended by H.B. 566, violates the “results”

prong of Section 2 of the Voting Rights Act by not including at least one additional majority African-American district in the Metro Atlanta area.¹

- (b) Summarize, in the space provided below, the facts of this case. The summary should not be argumentative nor recite evidence.**

Plaintiffs' Statement of Facts:

The Georgia House of Representatives is composed of 180 members, each of whom is elected from single-member districts. In 2011, following the 2010 Census, the General Assembly enacted a redistricting map (Act No. 1 EX), which packed Georgia's African-American voters into as few House districts as possible. In many majority African-American districts, the result was a Black Voting Age Population ("BVAP") of nearly 70%. By packing African-American voters into majority-minority districts and cracking the populations of African-American voters not placed in majority African-American districts, the General Assembly failed to account for the fact that the growing African-American population in the Atlanta metropolitan area made it possible to draw *at least* one additional majority African-American House district that would have the ability to elect the African-American voters' candidate of choice. By failing to draw at least one additional

¹ Plaintiffs also allege that under H.B. 566, House Districts 105 and 111 are racial gerrymanders in violation of the Fourteenth Amendment. This Joint Preliminary Report and Discovery Plan is limited to discussing Plaintiffs' Section 2 claim because Plaintiffs' racial gerrymandering claims are moving forward pursuant to a separate schedule ordered by the Court.

majority African-American district in the current House map, the current map for the Georgia House of Representatives violates the “results” prong of Section 2.

Defendants’ Statement of Facts:

The redistricting plan for the Georgia House of Representatives consists of 180 single-member districts. The ten county metro Atlanta area described by Plaintiffs contains all or part of eighty four (84) house districts. According to the 2010 census data, African-Americans make up a majority of the population in 31 of these 84 (36.9%) districts within the ten county area described by Plaintiffs as the Metro Atlanta area. According to Plaintiffs, 36.4% of the voting age population in this ten county area is African-American (any part). Doc. 84 ¶112.

The redistricting plans described in Act No. 1EX (2011) and Act No. 277 (2012) were both precleared by the U.S. Department of Justice under Sec. 5 of the Voting Rights Act. Act No. 251 (2015) was not subject to the preclearance requirement and made changes only to a total of seventeen (17) house districts.

In their Complaint, after criticizing the State for engaging in “mid-cycle redistricting,” the Thompson Plaintiffs assert that the State should have drawn at least one more minority-majority district somewhere “in the Atlanta metropolitan area.” They define the Atlanta metropolitan area to include Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, and Rockdale counties. To draw one or more new districts in the Atlanta metropolitan area would result in

a substantial redrawing of numerous Georgia House districts. That task cannot be accomplished in time for the 2018 elections. Instead, a new plan would be ready for 2020, at which time the Census will be complete. The State will await the results of that Census so that it can undertake the next round of reapportionment and redistricting in 2021, which will result in entirely new plans for elections to be held in 2022.

The alleged packing and cracking which the Thompson Plaintiffs point to should have been obvious in 2011, when these districts were first drawn and precleared. They cannot point to H.B. 566 to explain their delay in filing this action.

(c) The legal issues to be tried are as follows:

Plaintiffs' Statement of the Issues:

1. Whether the failure to create at least one additional majority-minority House District in the current redistricting plan, as amended by H.B. 566, violates the "results" prong of Section 2 of the Voting Rights Act.
2. The nature, extent and timing of appropriate remedial relief in the event the Court concludes that Plaintiffs have established liability on their Section 2 claim.

Defendants' Statement of the Issues:

1. Whether Plaintiffs can satisfy the three-part test of *Thornburgh v. Gingles*, 478 U.S. 30 (1986), as supplemented by *Johnson v. DeGrandy*, 512 U.S. 997 (1994), and satisfy the other prerequisites for relief?

2. Whether additional African-American majority districts can be created in the metro Atlanta area without using race as the predominant factor in creating the plan, and if not, whether Sec. 2 compels the creation of such additional districts?

3. Whether Plaintiffs can show that they did not delay the filing of this action unreasonably?

(d) The cases listed below (include both style and action number) are:

(1) Pending Related Cases: None.

(2) Previously Adjudicated Related Cases: None.

2. This case is complex because it possesses one or more of the features listed below (please check):

_____ (1) Unusually large number of parties

_____ (2) Unusually large number of claims or defenses

_____ (3) Factual issues are exceptionally complex

_____ (4) Greater than normal volume of evidence

_____ (5) Extended discovery period is needed

_____ (6) Problems locating or preserving evidence

_____ (7) Pending parallel investigations or action by government

(8) Multiple use of experts

(9) Need for discovery outside United States boundaries

(10) Existence of highly technical issues and proof

(11) Unusually complex discovery of electronically stored information

3. Counsel:

The following individually-named attorneys are hereby designated as lead counsel for the parties:

Plaintiffs:

Marc E. Elias, Abha Khanna, Aria C. Branch, and Quinton Washington are lead counsel for Plaintiffs.

Defendants:

Frank B. Strickland, and John J. Park, Jr. are lead counsel for Defendant.

4. Jurisdiction:

Is there any question regarding this Court's jurisdiction?

Yes No

5. Parties to This Action:

(a) The following persons are necessary parties who have not been joined:

None known at this time.

(b) The following persons are improperly joined as parties:

None.

(c) The names of the following parties are either inaccurately stated or necessary portions of their names are omitted:

None.

- (d) The parties shall have a continuing duty to inform the Court of any contentions regarding unnamed parties necessary to this action or any contentions regarding misjoinder of parties or errors in the statement of a party's name.

6. Amendments to the Pleadings:

Amended and supplemental pleadings must be filed in accordance with the time limitations and other provisions of Fed.R.Civ.P. 15. Further instructions regarding amendments are contained in LR 15.

- (a) List separately any amendments to the pleadings that the parties anticipate will be necessary:

None known at this time.

- (b) Amendments to the pleadings submitted LATER THAN THIRTY DAYS after the Joint Preliminary Report and Discovery Plan is filed, or should have been filed, will not be accepted for filing, unless otherwise permitted by law.

7. Filing Times for Motions:

All motions should be filed as soon as possible. The local rules set specific filing limits for some motions. These times are restated below.

All other motions must be filed WITHIN THIRTY DAYS after the beginning of discovery, unless the filing party has obtained prior permission of the court to file later. Local Rule 7.1A(2).

- (a) *Motions to Compel*: before the close of discovery or within the extension period allowed in some instances. Local Rule 37.1.

- (b) *Summary Judgment Motions*: within thirty days after the close of discovery, unless otherwise permitted by court order. Local Rule 56.1.

- (c) *Other Limited Motions*: Refer to Local Rules 7.2A; 7.2B, and 7.2E, respectively, regarding filing limitations for motions pending on removal, emergency motions, and motions for reconsideration.

(d) *Motions Objecting to Expert Testimony*: Daubert motions with regard to expert testimony no later than the date that the proposed pretrial order is submitted. Refer to Local Rule 7.2F.

8. Initial Disclosures

The parties are required to serve initial disclosures in accordance with Fed.R.Civ.P. 26. If any party objects that initial disclosures are not appropriate, state the party and basis for the party's objection. NOTE: Your initial disclosures should include electronically stored information. Refer to Fed.R.Civ.P. 26(a)(1)(B).

The Parties have already exchanged initial disclosures. *See* ECF Nos. 59-61.

9. Request for Scheduling Conference:

Does any party request a scheduling conference with the Court? If so, please state the issues which could be addressed and the position of each party.

Plaintiffs:

Plaintiffs do not request a scheduling conference with the Court at this time.

Defendants:

Defendants believe that a scheduling conference would be appropriate given the status of the other claims in these consolidated lawsuits.

10. Discovery Period

The discovery period commences thirty days after the appearance of the first defendant by answer to the complaint. As stated in LR 26.2A, responses to initiated discovery must be completed before expiration of the assigned discovery period.

Cases in this Court are assigned to one of the following three discovery tracks: (a) zero month discovery period, (b) four months discovery period, and (c) eight months discovery period. A chart showing the assignment of cases to a discovery track by filing category is contained in Appendix F. The track to which a particular case is assigned is also stamped on the complaint and service copies of the complaint at the time of filing.

Please state below the subjects on which discovery may be needed:

To the extent not already addressed through discovery in relation to the racial gerrymandering claim, the parties may seek discovery on the following:

1. The facts and circumstances leading to the enactment of the current House of Representatives redistricting plan;
2. Election histories and candidates;
3. Racially polarized voting;
4. The history of racial discrimination in voting in Georgia;
5. The extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate in the political process;
6. The use of racial appeals in political campaigns;
7. The extent to which Georgia has used voting practices that tend to enhance the opportunity for discrimination against minorities;
8. The extent to which minorities have been elected to public office; and
9. Maps and demographic information.

The Parties believe that a four-month discovery track is appropriate for this litigation.

11. Discovery Limitation and Discovery of Electronically Stored Information

(a) What changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or Local Rules of this Court, and what other limitations should be imposed?

The Parties do not request any changes to the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rules of this Court.

Defendant does, however, seek to limit discovery to matters *not* already covered as part of Plaintiffs' racial gerrymandering claim.

(b) Is any party seeking discovery of electronically stored information?

 X Yes No

If “yes,”

(1) The parties have discussed the sources and scope of the production of electronically stored information and have agreed to limit the scope of production (e.g., accessibility, search terms, date limitations, or key witnesses) as follows:

The Parties agree to limit the sources and scope of the production of electronically stored information to the topics for discovery set forth in Section 10 above. Plaintiffs do not intend to request that Defendants reproduce any discovery that has been produced to the NAACP Plaintiffs in this litigation thus far.

(2) The parties have discussed the format for the production of electronically stored information (e.g., Tagged Image File Format (TIFF or .TIF files), Portable Document Format (PDF), or native), method of production (e.g., paper or disk), and the inclusion or exclusion and use of metadata, and have agreed as follows:

In most circumstances, the electronically stored data will be exchanged in commonly used formats such as Excel spreadsheets, PDFs, Word and common video or audio files. To the extent that files to be exchanged are in less commonly used formats, the Parties will meet and confer about the best means for producing the data.

In the absence of agreement on issues regarding discovery of electronically stored information, the parties shall request a scheduling conference in paragraph 9 hereof.

12. Other Orders:

What other orders do the parties think that the Court should enter under Rule 26(c) or under Rule 16(b) and (c)?

The Parties request that the Court enter a Scheduling Order containing the following proposed deadlines:

Event	Deadline
Discovery Period	April 9, 2018 – August 9, 2018
Plaintiffs’ Expert Disclosures	June 11, 2018
Defendant’s Expert Disclosures	July 11, 2018
Plaintiffs’ Rebuttal Expert Disclosures	July 25, 2018

Dispositive motions (filed)	September 10, 2018
Dispositive motions (response)	October 1, 2018
Dispositive motions (reply)	October 15, 2018
Last Day for Daubert Motions	On last day to submit pretrial order
Last Day to submit pretrial Order	30 days after entry of the Court's ruling on summary judgment.
Trial	TBA

13. Settlement Potential:

(a) Lead counsel for the parties certify by their signatures below that they conducted a Rule 26(f) conference that was held on April 2, 2018, and that they participated in settlement discussions.

Other persons who participated in the settlement discussions are listed according to party.

For plaintiff: Lead counsel (signature): /s/ *Abha Khanna* and /s/ *Aria C. Branch*

Other participants: None

For defendant: Lead counsel (signature): /s/ *Frank B. Strickland* and /s/ *John J Park, Jr.*

Other participants: *Cristina Correia*

(b) All parties were promptly informed of all offers of settlement and following discussion by all counsel, it appears that there is now:

(_____) A possibility of settlement before discovery.

(_____) A possibility of settlement after discovery.

(_____) A possibility of settlement, but a conference with the judge is needed.

(X_____) No possibility of settlement.

(c) Counsel (_____) do or (X_____) do not intend to hold additional settlement conferences among themselves prior to the close of discovery. The proposed date of the next settlement conference is _____, 2018.

(d) The following specific problems have created a hindrance to settlement of this case:

Defendant, the Secretary of State, has no authority to enact redistricting plans for the legislative branch.

14. Trial by Magistrate Judge:

Note: Trial before a Magistrate Judge will be by jury trial if a party is otherwise entitled to a jury trial.

(a) The parties (_____) do consent to having this case tried before a magistrate judge of this Court. A completed Consent to Jurisdiction by a United States Magistrate Judge form has been submitted to the clerk of court this _____ day _____, of 20__.

(b) The parties (X) do not consent to having this case tried before a magistrate judge of this Court

Respectfully submitted,

By: /s/ Aria C. Branch

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2018 I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record in this case.

/s/ Aria Branch _____
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