

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:16-CV-1164**

LEAGUE OF WOMEN VOTERS OF)
NORTH CAROLINA, WILLIAM)
COLLINS, ELLIOTT FELDMAN,)
CAROL FAULKNER FOX, ANNETTE)
LOVE, MARIA PALMER, GUNTHER)
PECK, ERSLA PHELPS, JOHN)
QUINN, III, AARON SARVER, JANIE)
SMITH SUMPTER, ELIZABETH)
TORRES EVANS, and WILLIS)
WILLIAMS,)

Plaintiffs,)

v.)

ROBERT A. RUCHO, in his official)
capacity as Chairman of the North)
Carolina Senate Redistricting Committee)
for the 2016 Extra Session and Co-)
Chairman of the Joint Select Committee)
on Congressional Redistricting, *et al.*,)

Defendants.)

**DEFENDANTS’ RULE 26(f)
REPORT AND PROPOSED
DISCOVERY PLAN**

INTRODUCTION

In this redistricting action, twelve individual plaintiffs and one organizational plaintiff allege that the Congressional Plan enacted in 2016 by the North Carolina General Assembly (“2016 Plan”) constitutes an illegal political gerrymander. On 28 November 2016, defendants filed a motion to dismiss plaintiffs’ complaint on the grounds that plaintiffs have failed to allege any claims upon which relief can be granted (*See* D.E. 30). Plaintiffs’ response to defendants’ motion to dismiss was filed on 19

December 2016 (See D.E. 34). Defendants' Reply brief is due to be filed on or about 3 January 2017.

Also pending before this Court is a second civil action brought by two organizational plaintiffs and fourteen individual plaintiffs also alleging that the 2016 Plan constitutes a political gerrymander. *See Common Cause, et al. v Rucho*, Civil Action No. 1:16-CV-1026 (M.D.N.C. filed on 5 August 2016) hereafter ("*Common Cause*").¹ Defendants have filed a motion to dismiss plaintiffs' claims in *Common Cause* and that motion has been fully briefed by the parties.

The parties in *LWVNC* conducted a Rule 26(f) conference on 19 December 2016, but were not able to reach agreement on a scheduling order. Defendants are therefore submitting this proposed scheduling order for *LWVNC*, with the expectation that *Common Cause* and *LWVNC* will likely be consolidated for trial. The scheduling order proposed by the defendants in this case proposes a schedule that will allow for the depositions of all the individual plaintiffs in these two cases, all of the organizational plaintiffs in these two cases, all expert witnesses in these two cases, and a discovery schedule that will accommodate a scheduling order in *Common Cause* so that both cases can be consolidated for trial.

Defendants request that this case not be set for trial until September 2017. This will allow the defendants a reasonable opportunity to depose all of the plaintiffs, expert witnesses, and other witnesses in both this case and *Common Cause*. A September 2017 trial setting will not prevent the Court from ordering relief in time for the 2018 General

¹ For ease of reference, defendants will refer to the instant action as the "*LWVNC*" action.

Election should plaintiffs prevail, just as an October 2015 trial setting did not prevent the Court from ordering relief in another case involving congressional districting. The 2016 Plan challenged here was enacted to comply with an order entered by a three-judge court of this district on 5 February 2016. *See Harris v. McCrory*, 1:13-cv-949 (M.D.N.C.). The *Harris* case was tried before the three-judge court in October 2015. Thus, scheduling this case for trial in September 2017 will not prevent this Court from deciding the case in time for the legislature to draw new plans for the 2018 General Elections, should such relief be ordered by this Court.

PROPOSED SCHEDULING ORDER

1. Initial Disclosures. Initial disclosures are due January 13, 2017.
2. Pursuant to Fed. R. Civ. P. 26(f) and Local Civil Rule 16.1(b), the parties held conferences on 19 December 2016. The parties were unable to reach an agreement on a discovery plan. Defendants therefore propose the following:
 3. Discovery Plan. Defendants propose to the Court the following discovery plan:
 - a. Discovery will be needed on the following subjects: (i) the allegations and Prayer for Relief in plaintiffs' Complaint; and (ii) the defenses and allegations in Defendants' Answer.
 - b. Discovery shall be placed on a case-management track established in Local Civil Rule 26.1. Defendants believe that the appropriate plan for this case (with the stipulated modifications set out below) is that designated in Local Civil Rule 26.1(a) as Complex.

c. Subject to the Court's ruling on defendants' motion to dismiss, the date for the completion of all discovery (general and expert) is 5 May 2017.

d. Defendants propose the following modifications to the case management track: depositions are limited to 20, excluding experts, by plaintiffs (collectively), and 20 depositions, excluding experts, by defendants (collectively).

e. Reports from retained experts under Rule 26(a)(2) are due during the discovery period from plaintiffs on or before 1 March 2017, and from defendants on or before 2 April 2017.

f. Supplementations shall be made pursuant to Rule 26(e).

g. The foregoing schedule will be modified by agreement of the parties for approval by the Court or order of the Court.

4. Mediation is not required under Local Civil Rule 16.4 for this case.

5. Preliminary Deposition Schedule. Depositions of experts shall be completed no later than 5 May 2017. To the extent possible, dates for depositions shall be set by mutual agreement.

6. Other Issues.

a. Defendants request a trial setting of no earlier than the September 2017 trial calendar. This will allow adequate time to complete discovery in this case and *Common Cause* so that both cases can be consolidated for trial. Moreover, undersigned counsel for defendants, Thomas A. Farr, already has trials scheduled or requested for 3 March 2017 (*USTC v. Big South Wholesale, VA*, Case No. 5:13-CV-00527-F, E.D.N.C.), and 30 May 2017 (*Hurley v. Thalle*, No. 16-

CV-000174, Orange County Superior Court), while all undersigned counsel have a trial scheduled for the July trial calendar in the Middle District (*Action NC, et al. v. Kim Westbrook Strach, et al.*, No. 1:15-CV-1063, M.D.N.C.).

b. Plaintiffs should be allowed until 16 January 2017 to request leave to join additional parties or amend pleadings.

c. Defendants should be allowed until 16 February 2017 to request leave to join additional parties or amend pleadings.

d. After these dates, the Court will consider, *inter alia*, whether the granting of leave would delay trial.

e. The parties have discussed special procedures for managing this case, including reference of the case to a Magistrate Judge on consent of the parties under 28 U.S.C. §§ 636(c), or appointment of a master, and they do not wish to use any such procedures.

f. Trial of the action is expected to take approximately 5 days. A jury trial has not been demanded.

Respectfully submitted this 4th day of January, 2017.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr
N.C. State Bar No. 10871
Phillip J. Strach
N.C. State Bar No. 29456
Michael D. McKnight
N.C. State Bar No. 36932
thomas.farr@ogletreedeakins.com
phil.strach@ogletreedeakins.com
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412

NORTH CAROLINA DEPARTMENT OF
JUSTICE

By: /s/ Alexander McC. Peters

Alexander McC. Peters
Senior Deputy Attorney General
N.C. State Bar No. 13654
apeters@ncdoj.gov
James Bernier, Jr.
Assistant Attorney General
N.C. State Bar No. 45869
jbernier@ncdoj.gov
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 716-6900
Facsimile: (919) 716-6763

Counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' RULE 26(f) REPORT AND PROPOSED DISCOVERY PLAN** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Anita S. Earls
Allison J. Riggs
Emily Seawell
Southern Coalition for Social Justice
anitaearls@southerncoalition.org
allisonriggs@southerncoalition.org
emilyseawell@southerncoalition.org
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380 ext. 115
Facsimile: 919-323-3942
Counsel for All Plaintiffs

Nicholas O. Stephanopoulos
University of Chicago Law School
1111 E 60th Street
Chicago, IL 60637
Telephone: (773) 702-4226
nsteph@uchicago.edu

J. Gerald Hebert
Ruth Greenwood
Annabelle Harless
Danielle Lang
Campaign Legal Center
1411 K Street NW, Suite 1400
Washington, DC 20005
Telephone: (202) 736-2200
ghebert@campaignlegalcenter.org
rgreenwood@campaignlegalcenter.org
aharless@campaignlegalcenter.org
dlang@campaignlegalcenter.org

This the 4th day of January, 2017.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr
N.C. State Bar No. 10871
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Telephone: 919.787.9700
Facsimile: 919.783.9412
thomas.farr@odnss.com

Co-Counsel for Defendants

27901582.1