

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

COMMON CAUSE, *et al.*,

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.

CIVIL ACTION
NO. 1:16-CV-1026-WO-JEP

THREE-JUDGE COURT

LEAGUE OF WOMEN VOTERS OF NORTH
CAROLINA, *et al.*,

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 2016 Joint
Select Committee on Congressional
Redistricting, *et al.*,

DEFENDANTS.

CIVIL ACTION
NO. 1:16-CV-1164-WO-JEP

THREE JUDGE PANEL

JOINT RULE 26(f) REPORT

1. Pursuant to Fed.R.Civ.P. 26(f) and LR16.1(b), a meeting was held between the parties on November 2, 2016. The parties were unable to agree on a discovery plan, and Plaintiffs and Defendants in the now consolidated cases submitted separate reports.

The Court held a pretrial conference on February 6, 2017 in these consolidated cases, and the parties, after observations from the Court, conferred and agreed to jointly present the following discovery matters and dates to the Court for its consideration.

2. **Discovery Plan.** The parties 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' Complaints; and (ii) the defenses and allegations in Defendants' Answers, when filed.

- Specifically, Plaintiffs in *League of Women Voters of North Carolina, et al., v Rucho, et al.*, No. 1:16-cv-1164, will need discovery to satisfy the following three-prong test for partisan gerrymandering to prove their Fourteenth Amendment claim:

- i. Discriminatory Intent: (1) Whether the 2016 Congressional Redistricting Plan was enacted to engage in intentional discrimination against an identifiable political group; and (2) whether the purpose motivating the 2016 Congressional Redistricting Plan was to benefit one party or disadvantage another party;

- ii. Discriminatory Effect: (1) Whether the 2016 Congressional Redistricting Plan exhibits a high and durable level of partisan asymmetry relative to historical norms; and (2) whether the efficiency gap as a measure of partisan symmetry demonstrates that the 2016 Congressional Redistricting Plan had the effect of giving one political party a systematic advantage in converting votes into actual seats; and

- iii. Justification: Whether the State can prove that the 2016

Congressional Redistricting Plan's high and durable asymmetry can be justified by the State's political geography or legitimate redistricting objectives.

- Plaintiffs in *Common Cause et al., v. Rucho, et al.*, No. 16-1026, will inform Defendants and the Court by February 15, 2017 of the legal standards that the Court should apply in evaluating the evidence.
- b) Discovery should be placed on a case-management track established in LR 26.1. The parties propose that the appropriate plan for this case (with the modifications set forth below) is that designated in LR 26.1(a) as Standard.
- c) Modifications to the case management track should include: (i) all discovery, including expert discovery, shall be completed by April 28, 2017; (ii) depositions shall be limited to 40 depositions, excluding experts, by Plaintiffs (collectively), and 40 depositions, excluding experts, by Defendants (collectively); (iii) Plaintiffs (collectively) and Defendants (collectively) may serve up to 150 requests for admission; and (iv) Plaintiffs (collectively) may serve up to 25 interrogatories on Defendants, and Defendants (collectively) may serve up to 25 interrogatories on each individual Plaintiff (provided that interrogatories directed to plaintiffs as individuals are consistent as among plaintiffs).
- d) Reports required by Rule 26(a)(2)(B) and disclosures required by Rule 26(a)(2)(C) shall be due during the discovery period, from Plaintiffs on or before March 1, 2017, and from Defendants on or before April 3, 2017.
- e) Supplementations will be as provided in Rule 26(e) or as otherwise ordered by the court.
- f) Any dispositive motions will be filed by May 12, 2017, with responses due May 26, 2017, and any replies due May 31, 2017.

3. **Mediation.** Mediation is not required under LR 16.4 for this case. The parties request that the Court enter an order providing that the parties need not participate in mediation in this case.

4. **Preliminary Deposition Schedule.** The parties agree that all depositions will be completed by the close of discovery on April 28, 2017. To the extent possible, dates and locations for depositions shall be set by mutual agreement.

5. **Other Items.**

- a) Plaintiffs and Defendants should be allowed until February 10, 2017 to request leave to join additional parties or amend pleadings.
- b) Defendants will file their Answers to the Complaints by March 3, 2017.
- c) After these dates, the Court will consider, *inter alia*, whether the granting of leave to join additional parties or amend pleadings would delay trial.
- d) With regard to the possibility of 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, the parties state that they do not wish to use any such procedures.
- e) The parties agree the trial should be set for June 26, 2017 for five (5) days. A jury trial has not been demanded.
- f) Plaintiffs and Defendants in both cases have served initial disclosures.
- g) Defendants filed motions to dismiss in both cases, and those motions have been fully briefed.
- h) Plaintiffs in both cases deposed Thomas B. Hofeller, Robert A. Rucho, and David R. Lewis on January 24, January 25, and January 26, 2017, respectively, with the depositions of Thomas B. Hofeller and David R. Lewis to be concluded at a later date by agreement of the parties.

Respectfully submitted, this 14th day of February, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record.

This the 14th day of February, 2017.

/s/ Anita S. Earls

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