

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

NO. 1:13-CV-00949

**DAVID HARRIS; CHRISTINE
BOWSER; and SAMUEL LOVE,**

Plaintiffs,

v.

**PATRICK MCCRORY, in his capacity
as Governor of North Carolina; NORTH
CAROLINA STATE BOARD OF
ELECTIONS; and JOSHUA HOWARD,
in his capacity as Chairman of the North
Carolina State Board of Elections,**

Defendants.

**PLAINTIFFS' AND DEFENDANTS'
JOINT MOTION FOR
CONTINUANCE OF TRIAL**

Plaintiffs and Defendants hereby respectfully move the Court to postpone the trial of this case to a date in 2015 that is mutually acceptable to the Court and the parties.

Trial is currently scheduled to begin on August 4, 2014, but a continuance of the trial will promote judicial efficiency and allow time for the United States Supreme Court to decide a pending case that could materially affect the legal issues in this case.

A continuance of the trial will provide the Court with additional time to rule on the parties' pending motions for summary judgment, which were filed on June 2, 2014.

Parties on both sides are seeking judgment as a matter of law on Plaintiffs' claims in their entirety, and the resolution of those motions could obviate the need for a trial. In addition, even if the Court does not grant summary judgment, its rulings on the pending

motions could narrow the issues for trial and affect the parties' evidentiary presentations. To allow for these potential judicial efficiencies, the parties agree that a continuance of the trial is appropriate.

A continuance also is supported by the U.S. Supreme Court's recent decision to hear the plaintiffs' appeal in *Alabama Legislative Black Caucus v. Alabama*, No. 13-895,¹ a case that Plaintiffs contend involves claims substantially similar to those in this case. In the Alabama case, as here, plaintiffs alleged that the legislature drew voting districts with race as the predominant purpose by allegedly packing African-Americans into districts. Like Plaintiffs in this case, the Alabama plaintiffs alleged that the challenged districts violate the Equal Protection Clause of the United States Constitution. In a 2-1 decision, the Alabama federal district court denied the plaintiffs' claims, *see Alabama Legislative Black Caucus*, No. 2:12-CV-69, 2013 U.S. Dist. LEXIS 178735 (M.D. Ala. 2013), and the issue of the extent to which race may be used to draw voting districts is now squarely before the Supreme Court for a decision in the Court's 2015 term. A continuance of the trial in this case until after the Supreme Court decides the Alabama case may provide the Court and the parties with the benefit of potential further clarification of the law relating to Plaintiffs' claims that the North Carolina Legislature engaged in race-based redistricting in violation of the Equal Protection Clause. Specifically, the Alabama case may further clarify the law governing issues in this case as to whether race was the "predominant factor" when the North Carolina General Assembly drew CD 1 and CD 12,

¹ There is also a companion case, *Alabama Democratic Conference v. Alabama*, No. 13-1138.

and if so, whether such districts were “narrowly tailored” for purposes of a strict-scrutiny analysis. The focus of the trial court’s decision in the Alabama case was Section 5 of the Voting Rights Act, but the Supreme Court’s analysis of the predominance and narrow tailoring issues may be just as relevant in the Section 2 context and therefore will provide helpful guidance to the parties and the Court.

Finally, as further support for a continuance, Defendants assert that if Plaintiffs were to prevail on their claims, it is too late for them to obtain relief in time to affect the upcoming 2014 elections. Defendants’ position, therefore, is that any urgency created by election deadlines no longer exists. Given the unique circumstances and posture of this case, including that the Court has denied Plaintiffs’ Motion for a Preliminary Injunction and that dispositive motions are pending, Plaintiffs do not oppose Defendants’ position.

For these reasons, the parties respectfully request that the Court continue the trial in this case and, at an appropriate time, set a new trial date in 2015.²

² Defendants respectfully request that any new trial date ordered by the Court not conflict with the trial currently set for July 2015 in *North Carolina State Conference of NAACP v. McCrory*, 1:13-cv-00658-TDS-JEP (M.D.N.C.). Plaintiffs have no objection to accommodating that request.

Respectfully submitted, this the 22nd day of July, 2014.

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*Local Rule 83.1
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CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing **PLAINTIFFS' AND DEFENDANTS' JOINT MOTION FOR CONTINUANCE OF TRIAL** to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action.

This the 22nd day of July, 2014.

/s/ Edwin M. Speas, Jr.
Edwin M. Speas, Jr.