

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

DAVID HARRIS, CHRISTINE)
BOWSER, and SAMUEL LOVE,)
)
Plaintiffs,)
)
v.) 1:13CV949
)
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.)

ORDER

Presently pending before this court are cross motions for summary judgment (Docs. 68, 69) and the parties' joint motion to continue the trial (Doc. 84). Also pending is Defendants' motion requesting expansion of the page limitation for the Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment. (Doc. 77.) Plaintiffs raise a persuasive argument in opposition to Defendants' motion to expand the page limitation. (See Doc. 80.) However, in light of this court's findings as set forth herein, this court will grant Defendant's motion for excess pages.

This court further finds that the parties' joint motion to continue trial (Doc. 84) should be granted. The parties jointly argue, *inter alia*, that a Supreme Court decision from Alabama Legislative Black Caucus v. Alabama, ____ U.S. ____, 134 S. Ct. 2695 (2014), may clarify the relevant standards to be applied in Equal Protection redistricting analysis. In light of the parties' agreement, this court finds a continuance appropriate.

This court further finds the parties' cross motions for summary judgment should be denied without prejudice. Because this court has determined to grant the requested continuance, this court will not issue a memorandum opinion explaining the summary judgment ruling at the present time. However, so the parties are able to plan accordingly, this court finds on the current record that there are issues of fact as to the redistricting which occurred as to both CD 1 and CD 12. The issues presented in this case are highly fact intensive and best resolved at trial. See Hunt v. Cromartie, 526 U.S. 541, 553 n.9 (1999) ("Just as summary judgment is rarely granted in a plaintiff's favor in cases where the issue is a defendant's racial motivation, such as disparate treatment suits under Title VII or racial discrimination claims under 42 U.S.C. § 1981, the same holds true for racial gerrymandering claims of the sort

brought here."). Similarly, with respect to Defendants' affirmative defenses, this court finds there are factual disputes and unresolved state law legal issues which preclude summary judgment.

In light of the fact that trial will be continued pending a decision by the Supreme Court, summary judgment shall be denied without prejudice to the parties' right to file additional briefs addressing any new issues raised as a result of the Supreme Court's opinion.

As a result of the foregoing, this court finds that the motions for summary judgment should be denied, the motion to continue should be granted, and this matter stayed until the United States Supreme Court issues its opinion in Alabama Legislative Black Caucus v. Alabama, 134 S. Ct. 2695 (2014).

IT IS THEREFORE ORDERED that the motions for summary judgment (Docs. 68, 69) are **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Defendants' motion for leave to file excess pages (Doc. 77) is **GRANTED**. Defendants have previously filed the response containing excess pages (Doc. 76), and no further filing is permitted.

IT IS FURTHER ORDERED, by and with the agreement of the parties, that the motion to continue trial (Doc. 84) is **GRANTED**

and this matter shall be continued to a date certain to be determined following the Supreme Court's opinion in Alabama Legislative Black Caucus v. Alabama. Within thirty days of the issuance of the Supreme Court's opinion, the parties shall file a joint status report with this court containing a copy of the Supreme Court's opinion and requesting a status conference.

IT IS FURTHER ORDERED that further proceedings in this case are stayed unless otherwise ordered by this court.

This the 29th day of July, 2014.

FOR THE COURT:

/s/ William L. Osteen, Jr.
Chief United States District Judge