

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

TENNESSEE STATE CONFERENCE OF)
THE NAACP et al.,)
)
)
Plaintiffs,)
)
)
v.)
)
)
WILLIAM B. LEE et al.,)
)
Defendants.)

No. 3:23-cv-00832

JUDGE ELI RICHARDSON
JUDGE ERIC E. MURPHY
JUDGE BENITA Y. PEARSON
MAGISTRATE JUDGE ALISTAIR
NEWBERN

THE PARTIES’ JOINT MOTION FOR EXTENSION OF DISCOVERY TIMELINES

Pursuant to Fed. R. Civ. P. Rule 6(b) and Local Rule 6.01(a), the Parties propose the below adjustments to the Court’s Case Management Order (ECF No. 47). Importantly, these proposed extensions will not affect the Court’s proposed trial date.

Event	Current Deadline	Proposed Deadline
Deadline to complete fact discovery	July 8, 2024	September 27, 2024
Deadline for opening expert reports where the disclosing party bears the burden of proof	July 25, 2024	October 2, 2024
Deadline for rebuttal expert reports	September 12, 2024	November 12, 2024
Deadline for reply to rebuttal reports	October 25, 2024	December 11, 2024
<i>General Election</i>	<i>November 5, 2024</i>	<i>November 5, 2024</i>
Filing of supplemental expert reports	December 20, 2024 (however, this is	January 6, 2025 (however, this is

	dependent on the State's relevant precinct-level election results being available by December 5, 2024).	dependent on the State's relevant precinct-level election results being available by December 21, 2024).
Deadline for expert depositions	January 10, 2025	January 15, 2025
Deadline to file motions for summary judgment and <i>Daubert</i> motions	January 24, 2025	January 24, 2025
Deadline to file responses to motions for summary judgment and <i>Daubert</i> motions	February 14, 2025	February 14, 2025
Deadline to file replies to motions for summary judgment and <i>Daubert</i> motions	February 21, 2025	February 21, 2025
Deadline for joint pretrial order	April 1, 2025	April 1, 2025
Deadline for motions in limine	April 1, 2025	April 1, 2025
Proposed trial date	April 21, 2025	April 21, 2025

In addition, the Parties set forth the pending discovery disputes and their positions regarding the need for an extension of the discovery deadlines.

1. On November 9, 2023, this Court entered its Initial Case Management Order (ECF No. 47) setting forth deadlines governing discovery, dispositive motions, pretrial motions, and a proposed trial date.

2. The Parties have complied with the deadlines set forth in the Initial Case Management Order and remain engaged in fact discovery, including written discovery and document production.

3. In March 2024, Plaintiffs served Rule 45 document and deposition subpoenas on nine legislators and one staff member (collectively, "the Subpoena Recipients") (*see* ECF No. 59-1).

4. On April 24, 2024, Plaintiffs filed their Motion to Compel Documents and Deposition Testimony of Legislators (ECF No. 59).

5. On May 6, 2024, the Subpoena Recipients filed their Opposition to Plaintiffs' Motion to Compel and a Motion to Quash and for a Protective Order (ECF No. 62).

6. On May 16, 2024, Plaintiffs filed their Reply in Support of their Motion to Compel and Plaintiffs' Opposition to Non-Party Legislators' Motion to Quash and for a Protective Order (ECF No. 63).

7. As of the date of this Joint Motion, Plaintiffs' Motion to Compel or Subpoena Recipients' Motion to Quash and for a Protective Order is currently pending.

8. Defendants' Motion to Dismiss, which was fully briefed on November 21, 2023, and heard for argument on May 24, 2024, remains pending.

9. **Plaintiffs' position:**

Plaintiffs believe that an extension of the fact and expert discovery deadlines is necessary given that certain discovery productions and privilege logs remain outstanding, depositions still need to be scheduled, and recent discovery has made clear the necessity of issuing a third-party subpoena to the late John Ryder and his former law firm. This request for extension is not intended to impact the current trial date. An extension will likewise provide additional time for the adjudication of Plaintiffs' Motion to Compel Documents and Deposition Testimony of Legislators, ECF No. 59. To date, Plaintiffs still have no information on who drew Tennessee's congressional and state senate plans and what their exact motivations were for drawing the maps. Under the standard of proof for racial gerrymandering claims established in *Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221 (2024), the burden at trial rests on Plaintiffs to disentangle race from politics where Defendants raise the partisanship defense. Understanding exactly what partisanship

rationales motivated the legislature, therefore, is crucial in such cases. Given Defendants' representations that partisanship considerations generally drove the map drawing and that Defendants themselves have no insight or information regarding the development of the congressional and senate maps, Plaintiffs should be allowed to take discovery of the Legislators prior to dispositive motion practice (and potentially trial) and hope that these issues will be resolved expeditiously.

Thus, there is good cause for the request for an extension of the deadlines in the case schedule, including to allow for the resolution of Plaintiffs' Motion to Compel and Subpoena Recipients' Motion to Quash and for a Protective Order, and to allow for any additional discovery and depositions that may be necessary following the Court's resolution of the pending motions.

10. Defendants' position:

Defendants also believe that an extension of the fact discovery deadline to September 27, 2024 is necessary. Such an extension will allow for resolution of motions that impact the scope of fact discovery, provide Defendants the opportunity to conduct discovery regarding standing informed by recent Supreme Court precedent, and furnish Defendants additional time to respond to Plaintiffs' discovery requests.

At least two facets of fact discovery will not occur until after July 8. Plaintiffs postponed discovery of Governor Lee until resolution of Defendant's Motion to Dismiss. And, in the event Plaintiff's pending Motion to Compel is ultimately resolved in Plaintiffs' favor, including after all appellate remedies are exhausted, Defendants agreed to not further object on the basis that fact discovery concluded on July 8, 2024.

Defendants believe the Supreme Court's recent guidance in *Food & Drug Admin. v. All. for Hippocratic Med.*, No. 23-235, 2024 WL 2964140, at *13 (U.S. June 13, 2024) shifts the

standard governing organizational standing. Defendants have not received documents responsive to Requests for Production related to standing and anticipate that additional discovery on this front may be necessary.

Finally, Defendants require additional time to fully respond to Plaintiffs' Requests for Production and requests for depositions. The breadth of Plaintiffs' Requests for Production generated upwards of 35,000 documents to be reviewed for responsiveness and privilege. Despite diligent efforts, Defendants request additional time to complete document production.

For these reasons, Defendants believe there is good cause to extend the fact discovery deadline into September 2024.

Dated: July 1, 2024

Respectfully Submitted,

/s/ Phillip F. Cramer

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