

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DAN McCONCHIE, *et al.*,)
)
Plaintiffs,) Case No. 21-cv-3091
v.)
) Circuit Judge Michael B. Brennan
CHARLES SCHOLZ, *et al.*,) Chief District Judge Jon E. DeGuilio
) District Judge Robert M. Dow, Jr.
Defendants,)
) Three-Judge Court -- 28 U.S.C. § 2284(a)
)

JULE CONTRERAS, *et al.*,)
)
Plaintiffs,)
v.) Case No. 21-cv-3139
)
) Circuit Judge Michael B. Brennan
ILLINOIS STATE BOARD OF ELECTIONS, *et*) Chief District Judge Jon E. DeGuilio
al.,) District Judge Robert M. Dow, Jr.
Defendants,)
) Three-Judge Court -- 28 U.S.C. § 2284(a)
)

EAST ST. LOUIS BRANCH NAACP, *et al.*,)
) Case No. 21-cv-05512
Plaintiffs,)
v.) Circuit Judge Michael B. Brennan
) Chief District Judge Jon E. DeGuilio
ILLINOIS STATE BOARD OF ELECTIONS, *et*) District Judge Robert M. Dow, Jr.
al.,)
) Three-Judge Court -- 28 U.S.C. § 2284(a)
Defendants,)

PLAINTIFFS' JOINT NOTICE REGARDING REMEDIAL HEARING

In anticipation of the Court's status hearing on December 3, 2021, Plaintiffs in all three cases respectfully submit this joint notice regarding a potential remedial hearing.¹ For the reasons

¹ NAACP Plaintiffs' position is stated where it varies from McConchie and Contreras Plaintiffs.

set forth below, McConchie and Contreras Plaintiffs' position regarding the possibility of a hearing is that the Court may decide a remedy based only on the briefing and accompanying written materials to be completed on December 1, 2021, and without a hearing. NAACP Plaintiffs request oral arguments at the scheduled hearing, but do not believe that live testimony is necessary in that hearing.

After the close of remedial briefing on December 1, 2021, the parties will have submitted substantial briefing, expert materials, fact witness testimony by deposition and declaration, and other evidentiary material. The large record that the Court will have available to it for the purposes of reaching an appropriate and legal remedial plan will require time for review. The days that the Court has set aside for the hearing may instead serve as additional time for the Court to examine that record leading up to the date that Defendant Members of the Illinois State Board of Elections stated is critical for conducting 2022 elections.

After counsel for Plaintiffs informed Defendants by email and in a status conference before Magistrate Judge Jantz that live testimony at a hearing and therefore depositions of expert witnesses may not be necessary given the extensive record and compressed schedule, counsel for Defendants nonetheless sent deposition notices on November 24, 2021 for all nine of Plaintiffs' expert witnesses. Plaintiffs now have asked to depose Defendants' one, single expert witness. Contreras Plaintiffs have also requested the deposition availability of three witnesses for whom Defendants submitted declarations. This would lead to potentially 13 or more depositions over the course of four business days. Given the understandable scheduling difficulties, some of these depositions would not take place until December 6, 2021, which is the day before the Court would begin the December 7, 2021 remedial hearing, and transcripts for depositions may not be completed until the end of the day on December 7, 2021, which is after the hearing has begun.

Even for depositions occurring on December 1 or 2, there would be very little time to review the transcripts and utilize relevant testimony at a hearing beginning only a few days later.

Plaintiffs also submit that the parties have counsel who live in 3 different states and expert witnesses who live in several additional states. Even though Plaintiffs are prepared to ensure attendance of all necessary witnesses, coordination of attendance at the multi-day hearing will be difficult. Additionally, Plaintiffs note the recently increasing cases of COVID-19 in Illinois, including in “the North region, a section of Illinois west of the Chicago area.”²

Given that over a dozen depositions would occur over four business days, including potentially the day before the remedial hearing, the limited time for Court review of the submissions and materials in support, and difficulties of hearing coordination for the parties, McConchie and Contreras Plaintiffs suggest that the Court forego a hearing and decide remedy on the written submissions. NAACP Plaintiffs request only a hearing involving oral argument by counsel. In practice, it is not uncommon for courts to enter a remedy without evidentiary hearings.

To the extent the Court believes that there are questions left unanswered by the briefs and submitted written materials, Plaintiffs respectfully suggest that additional responsive briefing and/or oral argument by counsel for the parties on limited questions may serve the Court better than a full evidentiary hearing.

Respectfully,

Dated: November 28, 2021

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² “Latest COVID-19 surge in Illinois surpasses late summer wave.” *Chicago Tribune*, Nov. 23, 2021, <https://www.chicagotribune.com/coronavirus/ct-coronavirus-fall-surge-20211123-cqlmk2wzqrfu7l5qym6jolph634-story.html>, accessed Nov. 26, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2021, a copy of the foregoing document was sent by electronic mail in compliance with Local Rule 5.9. All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing.

/s/ Ernest I. Herrera
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