

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

THE SOUTH CAROLINA STATE
CONFERENCE OF THE NAACP, *et al.*,

Plaintiffs,

v.

THOMAS C. ALEXANDER, *et al.*,

Defendants.

Case No. 3:21-cv-03302-JMC-TJH-RMG

JOINT REPORT REGARDING CONGRESSIONAL PLAN LITIGATION

Plaintiffs and Defendants submit this joint report in response to the Court’s February 16, 2022 text order regarding the litigation on the congressional plan. Dkt. No. 171. The parties respectfully request that the Court adopt the schedule below for a fall 2022 trial on the congressional plan rather than the July 11 trial date the Court’s order contemplates.

Plaintiffs do not seek court-ordered changes to the congressional plan for the 2022 elections. Accordingly, a trial in the fall provides ample time for the Court to adjudicate the matter and enter a remedy on Plaintiffs’ claims. In fact, for at least three reasons, a trial in the fall will better advance the interests of justice and facilitate the efficient resolution of this litigation than a trial in July.

First, as the parties previously informed the Court, they “generally agree that a trial on the state House claims could take place in May 2022, with the trial on the congressional claims in August or later 2022.” Dkt. No. 169 at 1. The Court granted Plaintiffs’ motion to amend their complaint to add challenges to the congressional plan on February 10, 2022. Dkt. No. 152. Plaintiffs filed their Second Amended Complaint, which was the first pleading to assert challenges against the congressional plan enacted by the General Assembly, later that day. *See* Dkt. No. 154.

To date, not every Defendant has responded to the Second Amended Complaint; the parties have not exchanged initial disclosures or conducted an initial conference with respect to Plaintiffs' new claims; and the parties have not engaged in any discovery related to those claims. The schedule proposed below will allow the parties sufficient time to prepare the case for trial, to narrow any issues presented, and to achieve an efficient resolution of this matter.

Moreover, a July trial date would impose significant burdens on the parties, their counsel, and witnesses. The trials on the State House plan and the congressional plan will involve the same parties and counsel and many of the same experts. The Court has set the trial on the State House plan for May 16 if the parties are unable to settle Plaintiffs' claims against that plan, and the parties anticipate that the trial could last up to two weeks. *See* Dkt. No. 170. A trial on the congressional plan also may last up to two weeks. Accordingly, discovery and pretrial proceedings for a July trial on the congressional plan would largely overlap with discovery, pretrial proceedings, a May trial, and any subsequent appellate proceedings on the State House plan.

Indeed, one reason the parties requested the two-week pause on depositions and motions practice in the State House plan litigation was that the crushing discovery burden on the parties, counsel, and their witnesses was interfering with efforts to move the case toward settlement. *See, e.g.*, Dkt. No. 169 at 1. So, too, would a discovery and pretrial schedule leading to a July trial on the congressional plan impose heavy burdens on the parties, counsel, and witnesses at that same time that they may be preparing for and litigating a two-week trial on the State House plan in May. It is unnecessary to impose those burdens when, as now, Plaintiffs do not seek court-ordered changes to the congressional plan for the 2022 elections and a fall trial will provide timely relief to the parties.

Second, as stated on the record at the February 15, 2022 status hearing, lead counsel for the Senate Defendants, Mr. John Gore, is scheduled for another trial in July and, regrettably, is unavailable for trial on the congressional plan that month. In particular, Mr. Gore is lead trial counsel to Defendant R.J. Reynolds Tobacco Company in longstanding, multi-party litigation in the United States District Court for the District of Columbia, *United States v. Philip Morris USA, Inc., et al.*, No. 99-2496 (PLF) (D.D.C.). That case is set for trial on June 13-14, 16, 21 and July 18-22 and 25-28, and has been set for trial in June and July since June 2021. *See* Order #118 – Remand at 3, *United States v. Philip Morris USA, Inc., et al.*, No. 99-2496 (PLF) (D.D.C. Feb. 2, 2022); *see also* Order #109 – Remand at 3, *United States v. Philip Morris USA, Inc., et al.*, No. 99-2496 (PLF) (D.D.C. June 16, 2021).

Other parties and their counsel also have scheduling conflicts, including personal obligations, that preclude participation in a July trial. In particular, Mr. Allen Chaney, Plaintiffs’ chief local counsel for trial on the congressional plan, is expecting a child on July 6 and would not be available for a trial that commences on July 11. Additionally, a lead counsel for the House Defendants, Ms. Jennifer Hollingsworth, and lead counsel for the Election Commission Defendants, Ms. M. Elizabeth Crum and Mr. Michael Burchstead, have a contested case hearing scheduled for July 11-15, 2022, in a proceeding that was continued from a February hearing due to this case’s initial Scheduling Order.

Third, the parties understand from the February 15 status conference that the Court is not available for trial in August. Turning to September, the South Carolina Chapter of the Federal Bar Association (FBA) is hosting the national Annual Meeting and Convention in Charleston the week of September 12, 2022. *See* <https://www.fedbar.org/event/fbacon22/>. The parties understand that the Chief Judge for the District of South Carolina is planning to hold the District Judges’ meeting

in Charleston sometime that week. In addition, the parties understand that the U.S. Court of Appeals for the Fourth Circuit may be holding oral arguments on Friday, September 16, 2022, in conjunction with the FBA Convention in Charleston. Therefore, courtroom availability could potentially become an issue at that time.

Accordingly, Plaintiffs and Defendants jointly and respectfully request that the Court enter the following schedule on the congressional plan litigation:

1. The Rule 26(f) Report is due on **February 28, 2022**.
2. Discovery commences on **March 7, 2022** or as of the date on which the Court enters a scheduling order.
3. The parties' initial disclosures are due on **March 29, 2022**.
4. Plaintiffs shall file and serve a document identifying by full name, address, and telephone number each person whom Plaintiffs expect to call as an expert at trial and certifying that a written report prepared and signed by the expert including all information required by Federal Rule of Civil Procedure 26(a)(2)(B) has been disclosed to the other parties by **April 4, 2022** (Fed. R. Civ. P. 26(a)(2)).¹ Plaintiffs' rebuttal experts are due on **April 25, 2022**.
5. Defendants shall file and serve a document identifying by full name, address, and telephone number each person whom Defendants expect to call as an expert at trial and certifying that a written report prepared and signed by the expert including all information required by Federal Rule of Civil Procedure 26(a)(2)(B) has been disclosed to the other parties by **April 11, 2022** (Fed. R. Civ. P. 26(a)(2)). Defendants' rebuttal experts are due on **April 25, 2022**.
6. Discovery shall be completed no later than **August 12, 2022**.
7. All motions other than (a) those relating to the admissibility of evidence at trial and (b) those to compel discovery, shall be filed no later than **August 19, 2022**.

¹ Concurrent with the identification of each expert and subject matter, each party shall serve (but not file): 1) a complete copy of the most recent curriculum vitae of each expert or a detailed summary of his qualifications to testify on each identified subject; 2) (a) a complete statement of all opinions to be expressed by each expert and the basis and reasons therefor; (b) the data and other information considered by the expert in forming the opinions, (c) any exhibits to be used as a summary of or support of the opinions, and (d) citations of any treatise, text, or other authority upon which each expert expressly relied; and 3) a copy of each expert's report if a report has been prepared.

8. No later than **August 26, 2022**, the parties shall file and exchange Fed. R. Civ. P. 26(a)(3) pretrial disclosures. Within seven (7) working days thereafter, a party shall file and exchange Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party and any deposition counter-designations under Fed. R. Civ. P. 32(a)(6).
9. Motions in limine are due by **September 2, 2022**. Responses are due by **September 9, 2022**.
10. Pretrial Conference will be held on **September 23, 2022**.
11. This case will be called for bench trial **from September 26, 2022 to October 7, 2022**.
12. Proposed Findings of Fact and Conclusions of Law are due **October 21, 2022**.

The Court's text order directed the parties to "set[] forth a proposed scheduling order that provides for a trial on the Congressional Plan to commence on July 11, 2022." Dkt. No. 171. To comply with the Court's order, the parties alternatively propose the following schedule if the Court decides to proceed with trial beginning on July 11:

1. The Rule 26(f) Report is due on **February 28, 2022**.
2. Discovery commences on **March 7, 2022** or as of the date on which the Court enters a scheduling order.
3. The parties' initial disclosures are due on **March 29, 2022**.
4. Plaintiffs shall file and serve a document identifying by full name, address, and telephone number each person whom Plaintiffs expect to call as an expert at trial and certifying that a written report prepared and signed by the expert including all information required by Federal Rule of Civil Procedure 26(a)(2)(B) has been disclosed to the other parties by **March 28, 2022** (Fed. R. Civ. P. 26(a)(2)).² Plaintiffs' Rebuttal experts are due on **April 18, 2022**.

² Concurrent with the identification of each expert and subject matter, each party shall serve (but not file): 1) a complete copy of the most recent curriculum vitae of each expert or a detailed summary of his qualifications to testify on each identified subject; 2) (a) a complete statement of all opinions to be expressed by each expert and the basis and reasons therefor; (b) the data and other information considered by the expert in forming the opinions, (c) any exhibits to be used as a summary of or support of the opinions, and (d) citations of any treatise, text, or other authority upon which each expert expressly relied; and 3) a copy of each expert's report if a report has been prepared.

5. Defendants shall file and serve a document identifying by full name, address, and telephone number each person whom Defendants expect to call as an expert at trial and certifying that a written report prepared and signed by the expert including all information required by Federal Rule of Civil Procedure 26(a)(2)(B) has been disclosed to the other parties by **April 4, 2022** (Fed. R. Civ. P. 26(a)(2)). Defendants' rebuttal experts are due on **April 18, 2022**.
6. Discovery shall be completed no later than **June 2, 2022**.
7. All motions other than (a) those relating to the admissibility of evidence at trial and (b) those to compel discovery, shall be filed no later than **June 3, 2022**.
8. No later than **June 3, 2022**, the parties shall file and exchange Fed. R. Civ. P. 26(a)(3) pretrial disclosures. Within seven (7) working days thereafter, a party shall file and exchange Fed. R. Civ. P. 26(a)(3) objections, any objections to use of a deposition designated by another party and any deposition counter-designations under Fed. R. Civ. P. 32(a)(6).
9. Motions in limine are due by **June 10, 2022**. Responses are due by **June 17, 2022**.
10. Pretrial Conference will be held on **July 8, 2022**.
11. This case will be called for bench trial from **July 11, 2022** to **July 22, 2022**.
12. Proposed Findings of Fact and Conclusions of Law are due **August 12, 2022**.

February 19, 2022

/s/ Robert E. Tyson Jr.
Robert E. Tyson, Jr. (7815)
Vordman Carlisle Traywick, III (12483)
La'Jessica Stringfellow (13006)
ROBINSON GRAY STEPP & LAFFITTE,
LLC
1310 Gadsden Street
Post Office Box 11449 (29211)
Columbia, South Carolina 29201
(803) 929-1400
rtyson@robinsongray.com
ltraywick@robinsongray.com
lstringfellow@robinsongray.com

Respectfully submitted,

/s/ Christopher J. Bryant
Christopher J. Bryant, Fed. ID 12538
BOROUGHES BRYANT, LLC
1122 Lady St., Ste. 208
Columbia, SC 29201
Tel.: (843) 779-5444
chris@boroughsbryant.com

Allen Chaney, Fed. ID 13181
AMERICAN CIVIL LIBERTIES UNION
OF SOUTH CAROLINA
Charleston, SC 29413-0998
Tel.: (843) 282-7953
Fax: (843) 720-1428
achaney@aclusc.org

John M. Gore (admitted *pro hac vice*)
Stephen J. Kenny (admitted *pro hac vice*)
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Phone: (202) 879-3939
Fax: (202) 626-1700
jmgore@jonesday.com
skenny@jonesday.com

Counsel for Senate Defendants

/s/ Mark C. Moore

Mark C. Moore (Fed. ID No. 4956)
Jennifer J. Hollingsworth (Fed. ID No.
11704)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
Telephone: 803.771.8900
MMoore@nexsenpruet.com
JHollingsworth@nexsenpruet.com
EWells@nexsenpruet.com

Andrew A. Mathias (Fed. ID No. 10166)
Konstantine P. Diamaduros (Fed. ID No.
12368)
NEXSEN PRUET, LLC
104 S. Main Street, Suite 900
Greenville, SC 29601
Telephone: 864.370.2211
AMathias@nexsenpruet.com
KDiamaduros@nexsenpruet.com

Rhett D. Ricard (Fed. ID No. 13549)
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, SC 29401
Telephone: 843.720.1707
RRicard@nexsenpruet.com

*Counsel for James H. Lucas, Chris Murphy,
and Wallace H. Jordan*

Leah C. Aden**
NAACP LEGAL DEFENSE & EDUCATIONAL
FUND, INC.
40 Rector St, 5th Fl.
NY, NY 10006
Tel.: (212) 965-7715
laden@naacpldf.org

Adriel I. Cepeda Derieux**
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
Tel.: (212) 549-2500
acepedaderieux@aclu.org

John A. Freedman**
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Ave., N.W.
Washington, D.C. 20001
Tel: (202) 942-5000
john.freedman@arnoldporter.com

Counsel for Plaintiffs
**Admitted *Pro Hac Vice*

/s/ Michael R. Burchstead
M. Elizabeth Crum (Fed. ID No. 372)
Jane Trinkley (Fed. ID No. 4143)
Michael R. Burchstead (Fed. ID No. 102967)
BURR AND FORMAN LLP
PO Box 11390
Columbia, SC 29211
Tel: (803) 799-9800
mburchstead@burr.com

Counsel for the Election Commission Defendants