

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN  
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREGORY W. ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259  
(DCG-JES-JVB)  
(consolidated cases)

**UNITED STATES' UNOPPOSED MOTION TO SET A JOINT STATUS CONFERENCE**  
**AND**  
**FINAL PRETRIAL CONFERENCE**

Pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, the United States respectfully moves this Court to schedule a joint status conference and final pretrial conference. The United States requests a status conference given multiple outstanding matters, including legislative privilege questions pending before the Fifth Circuit or briefing stayed pending a decision from the Fifth Circuit; unsealing depositions regarding legislative privilege; and unresolved motions to compel document production, quash depositions, and reopen depositions. The timeline for resolving these threshold evidentiary issues puts the feasibility of maintaining the scheduled September 28 trial date in question for a number of parties and the outcome of these matters has significant bearing on the presentation of claims.

The Initial Scheduling Order notes that the Court may announce a pretrial conference at a later date, *see* Order 4 n.1, ECF No. 96, but no such conference has been set. The United States respectfully requests a conference so that the Court may provide guidance concerning the manner in which it wishes to hear evidence.

The United States, Private Plaintiffs, and Defendants have met and conferred about issues related to trial. In particular, the United States requests on behalf of all parties to know the number of trial hours allotted on each calendar day to prepare efficient presentations and arrange for witness travel. The parties would be interested in establishing a clock or similar feature for keeping time that would allow all Plaintiffs 50 percent of the time and Defendants 50 percent of the time. The United States also respectfully requests that the Court adopt the following procedures, which have been used by other courts to facilitate efficient consideration of Voting Rights Act claims and are unopposed by the other parties:

- Simultaneous exchange of designations of deposition testimony for inclusion in the trial record, to be followed by simultaneous exchange of counter-designations for further admission in the trial record.
- Admission of affidavits submitted by witnesses presented solely for the purpose of establishing standing, for those witnesses for whom Defendants agree to waive cross-examination after examining said affidavits.
- Allowance for expert witnesses to present testimony concerning both a case in chief and rebuttal case in a single appearance.

The United States has attached Exhibit 1 that provides more detail about these features, including a timeline for exchanging deposition designations and filing motions *in limine*. The United States sought to include (a) admission into evidence of expert reports submitted by any expert who also testifies live at trial or (b) submission of a declaration for expert direct testimony with live cross examination and redirect, but Defendants would not agree to such procedures. The United States respectfully requests that the Court consider those procedures at the conference. The United States also acknowledges that there are additional matters for pretrial

consideration that the parties have not yet discussed. Accordingly, Exhibit 1 is not intended to be a complete list of all pretrial matters to be considered at a conference.

Pursuant to Local Rule CV-7(f), the proposed order is attached hereto.

Dated: August 22, 2022

JOHNATHAN SMITH  
Acting Principal Deputy Assistant Attorney General  
Civil Rights Division

REBECCA B. BOND  
Acting Deputy Assistant Attorney General  
Civil Rights Division

/s/ Michelle Rupp  
T. CHRISTIAN HERREN, JR.  
TIMOTHY F. MELLETT  
DANIEL J. FREEMAN  
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### CERTIFICATE OF CONFERRAL

Pursuant to Local Rule CV-7(g), I hereby certify that on August 22, 2022, I met and conferred with counsel for Defendants regarding this motion. Counsel for Defendants advised that they do not object to the relief sought in the above motion, as further clarified by the attached Exhibit 1, with the exception of the admission of expert reports or expert declarations. Likewise, on August 19, I met and conferred with counsel for Plaintiffs in this consolidated case, and they do not oppose the relief sought.

*/s/ Michelle Rupp* \_\_\_\_\_

Michelle Rupp  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2022, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Michelle Rupp

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**EXHIBIT ONE**

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**UNITED STATES' PROPOSAL FOR TRIAL PROCEDURES**

The United States proposes that the following procedures be used during the consolidated *LULAC v. Abbott* trial. All parties are in agreement with regard to all suggested procedures except admitting reports or declarations from expert witnesses.

- The parties shall exchange designations of deposition testimony for inclusion in the trial record no later than September 14. Designations may be made for any deposition testimony taken in this case. Any objections and counter designations shall be exchanged no later than September 19. Any party's counter designations may include testimony from a different witness and which is not related to matters initially included in that party's designations, but is related to matters raised by another party in its designations. The parties shall combine and file designations and objections, along with copies of associated transcripts, by no later than September 23. Notwithstanding these dates, any designations of deposition testimony related to a deposition occurring on or after September 5 shall be due no later than 4 days after the court reporting service provides the 5-day expedited transcript. Objections and counter designations shall be exchanged no later than 3 days later. Combined designations and objections shall be filed, along with copies of associated transcripts, no later than 3 days after the objections and counter designations are exchanged.
- Motions *in limine* shall be due no later than September 14, 2022. Any opposition shall be due no later than September 21, 2022. Notwithstanding these dates, motions *in limine* related to a deposition occurring on or after September 5 shall be due no later than 5 days after the court reporting service provides the 5-day expedited transcript. Any opposition shall be due no later than 7 days after the motion is filed. Motions *in limine* shall not include objections to the reliability of an expert's proposed testimony under Federal Rule

of Evidence 702, the deadline for which passed on August 5, 2022. These deadlines shall not be construed to limit the rights of the parties at trial, including the right to object to evidentiary issues as they arise.

- Private Plaintiffs may submit affidavits by witnesses presented solely for the purpose of establishing standing for inclusion in the trial record. Private Plaintiffs shall submit any such affidavits to Defendants for examination no later than September 12. Defendants shall notify Private Plaintiffs of which affidavits they accept without cross-examination, if any, no later than September 16.
- The Court will admit as evidence any expert report submitted by a qualified expert who is available and testifies on direct and cross examination. In the alternative, the Court will admit as evidence any declaration submitted by a qualified expert in lieu of live direct examination, subject to live cross examination and redirect examination.
- Expert witnesses who testify during a case in chief may also provide rebuttal or sur-rebuttal testimony during a single appearance at trial. An expert witness who provides rebuttal or sur-rebuttal testimony during a single appearance may not subsequently be recalled to the stand, except in the event that an opposing party's expert witness subsequently presents testimony at trial that is outside the scope of that expert witness' report or deposition, in which case an expert witness who has already provided rebuttal or sur-rebuttal testimony may be recalled to the stand for the sole purpose of rebutting the new testimony.
- Each trial day will begin at 9:00 a.m. and shall proceed until at least \_\_\_\_\_ p.m., with a \_\_\_\_\_ minute break for lunch. The parties should expect that trial will be conducted on Saturdays.



- A total number of \_\_\_\_\_ trial hours are available. The United States and Private Plaintiffs shall be collectively allotted 50% of the trial hours to conduct direct and cross examinations. Defendants shall be allotted 50% of the trial hours to conduct direct and cross examinations.
- Opening statements will be optional and will count against the trial time of each party.

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**[PROPOSED] ORDER SETTING A JOINT STATUS CONFERENCE  
AND  
FINAL PRETRIAL CONFERENCE**

Upon consideration of the United States' Motion to Set a Joint Status Conference and Final Pretrial Conference, and for good cause, the Motion is **GRANTED**. This case is **SET** for a joint status conference and final pretrial conference before the three-judge Court on \_\_\_\_\_, 2022, at \_\_\_\_\_ MST in Courtroom Number \_\_\_\_\_, United States Courthouse, 525 Magoffin Avenue, El Paso, Texas.

So **ORDERED** and **SIGNED** on this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
DAVID C. GUADERRAMA  
UNITED STATES DISTRICT JUDGE

*And on behalf of:*

Jerry E. Smith  
United States Circuit Judge  
U.S. Court of Appeals  
Fifth Circuit

-and-

Jeffrey V. Brown  
United States District Judge  
Southern District of Texas