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U. S. DISTRICT COURT
EASTERN DISTRICT OF MO
ST. LOUIS

IN THE UNITED STATES DISTRICT COURT

EASTERN MISSOURI

EASTERN DIVISION

PAUL BERRY III,

Plaintiff,

Case Number: No.4:22-CV-465-JAR

v.

JOHN R. (JAY) ASHCROFT,
in his official capacity as
Missouri Secretary of State and
STATE OF MISSOURI,

Defendants.

FIRST AMENDED MOTION TO SHORTEN TIME AND EXPEDITED SETTING

Plaintiff, Paul Berry III, files this First Amended Motion to Shorten Time and Expedited Setting, states as follows:

INTRODUCTION

Plaintiff hereby moves ex parte, pursuant to Federal Rule of Civil Procedure 6(c)(1)(C) and the Court's inherent power to manage its docket, for an order shortening the time for Defendants to file response and reply briefs to the underlying complaint by this First Amended Motion to Shorten Time and Expedited Setting filed herewith, and set a consolidated hearing and trial date for the underlying complaint at the first date of opportunity.

Plaintiff filed his original Motion to Shorten Time and Expedited Setting (Doc. 14) on April 27, 2022, requesting the Court to shorten time for Defendants to respond to the underlying complaint prior to May 17, 2022, which is twenty-one (21) days after March 26, 2022, the date the underlying complaint was served upon Defendants (see Doc. 8 and Doc. 9) and to expedite briefing, hearing and trial schedule for the underlying complaint.

The Court issued its order for hearing on Motion to Convene Three-Judge Court (Doc. 13) without issuing any order on Motion to Shorten Time and Expedited Setting (Doc. 14), to which, Plaintiff Berry assumes Motion to Shorten Time and Expedited Setting (Doc. 14) was taken under advisement until Motion to Convene Three-Judge Court (Doc. 13) was resolved by the Court.

Plaintiff recently filed Motion to Adjudicate Plaintiff Motion to Convene Three-Judge Court Upon Pleadings requesting the Court to grant Plaintiff's Motion to Convene Three-Judge Court (Doc. 13) due to all parties agreeing that a three-judge court should be empaneled to adjudicate the underlying complaint. The Court granting Motion to Adjudicate Plaintiff Motion to Convene Three-Judge Court Upon Pleadings would make this First Amended Motion to Shorten Time and Expedited Setting ripe for adjudication by the Court.

AUTHORITY OF THE COURT TO GRANT REQUESTED RELIEF

“An application to vary the time requirement [for hearing motions in rule 6] may be heard ex parte.” 4B Wright, Miller & Kane, Fed. Prac. & Proc. Civ. § 1169 at 582. Far shorter periods of time than that proposed here have been found acceptable under due process challenge. See *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1153 (10th Cir.

2001) (district court did not abuse its discretion in scheduling preliminary injunction hearing within 3 days of plaintiff's motion for injunctive relief; "Rule 65(a)(1) provides, in relevant part, that 'no preliminary injunction shall be issued without notice to the adverse party.' Neither the Rule nor the advisory committee notes specify the form or amount of notice required."); CIENA Corp. v. Jarrard, 203 F.3d 312, 319 (4th Cir. 2000) ("broad discretion is given to the district court to manage the timing and process for entry of all interlocutory injunctions – both TROs and preliminary injunctions – so long as the opposing party is given a reasonable opportunity, commensurate with the scarcity of time under the circumstances, to prepare a defense and advance reasons why the injunction should not issue.").

The essential requirement is that the defendant be "given a fair opportunity to oppose the application and to prepare for such opposition." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 433 n.7 (1974); *DOL v. Wolf Run Mining Co.*, 452 F.3d 275, 283 (4th Cir. 2006) (Fourth Circuit has "focus[ed] not on a specific time period but on whether the opposing party had a fair opportunity to oppose" preliminary injunction motion). Further, 28 U.S.C. § 2284 provides the "single judge" Court the authority to set hearings and trials for congressional malapointment complaints.

MOTION TO SHORTEN TIME RELEVANT DATES

Defendants are generally granted twenty-one (21) days after service of the underlying complaint to reply to the underlying complaint. Based upon the date the underlying complaint service of each Defendant was executed on April 26, 2022 (see Doc. 8 and Doc. 9),

Defendants are permitted until **May 17, 2022**, to reply to Plaintiff Berry's underlying complaint.

Further, 28 U.S.C. § 2284 provides the Missouri Governor and the Missouri Attorney General shall receive notice of the preliminary or permanent injunction hearing by certified or registered mail at least five (5) days prior to the date of the preliminary or permanent injunction hearing.

If the Court granted the setting of Plaintiff Berry's Motion for Preliminary Injunction Hearing on the same date as the last day Defendants are permitted to reply to the underlying complaint (May 17, 2022) and with the five (5) day notice required by the Missouri Governor and the Missouri Attorney General (which calculates to seven (7) days due to May 21st and May 22nd of 2022 falling on a weekend), the earliest date the Court could set Plaintiff Berry's Motion for Preliminary Injunction Hearing is **May 23, 2022**.

Rule 3.01 provides Defendants are entitled to at least fourteen (14) days after Plaintiff Berry's Motion for Preliminary Injunction Hearing is granted by the Court prior to being compelled to attend such a preliminary injunction hearing. If the Court did not take up the setting of Plaintiff Berry's Motion for Preliminary Injunction Hearing until the same date as the last day Defendants are permitted to reply to the underlying complaint (May 17, 2022), the Court will not set the instant Motion for Preliminary Injunction Hearing until **May 31, 2022**.

Even by Missouri circuit court order, section 115.127(6) RSMo provides the last day to remove a candidate from a Primary congressional election ballot is eight (8) weeks before the Missouri Primary congressional election set for August 2, 2022, or **June 7, 2022**, which states:

“6. Except as provided for in sections 115.247 and 115.359, if there is no additional cost for the printing or reprinting of ballots or if the candidate agrees to pay any printing or reprinting costs, a candidate who has filed for an office or who has been duly nominated for an office may, at any time after the certification of the notice of election required in subsection 1 of section 115.125 but no later than 5:00 p.m. on the eighth Tuesday before the election, withdraw as a candidate pursuant to a court order, which, except for good cause shown by the election authority in opposition thereto, shall be freely given upon application by the candidate to the circuit court of the area of such candidate's residence.”

The purpose of section 115.127(6) RSMo is to avoid chaos when conducting Missouri Primary elections, inter alia, to comply with the Uniformed and Overseas Citizens Absentee Voting Act by printing and mailing absentee ballots to United States Servicemen prior to forty-five (45) days prior to the 2022 Missouri Primary congressional election and compliance with section 115.914 RSMo.

Plaintiff Berry is confident the Court recognizes leaving seven (7) days between May 31, 2022, and June 7, 2022, to conduct a preliminary injunction hearing, permanent injunction trial and draft a new congressional map would be a challenge for the underlying parties and the Court to accomplish. Six million residents of the State of Missouri will have their right to equal representation in our United States Congress extinguished if the Court is not permitted the time necessary to fully-adjudicate the underlying complaint.

Plaintiff Berry humbly requests this Court grant this Motion to Shorten Time and Expedited Setting and set an expedited reply, briefing and hearing schedule to adjudicate the underlying preliminary injunction and permanent injunction applications that does not conflict with the Court's previously-set expedited scheduling for the underlying temporary restraining order.

REQUESTED ORDER

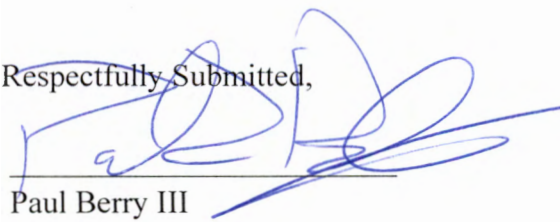
Plaintiff Berry humbly seeks the Court to issue the following expedited consolidated hearing and trial scheduling order, as follows:

“This matter is before the Court on Plaintiff Paul Berry III’s Complaint for Declaratory and Injunctive Relief against Defendants John R. Ashcroft in his capacity as Missouri Secretary of State and the State of Missouri. (Doc.1). The Court will set an expedited briefing schedule for Plaintiff’s underlying complaint and hold a consolidated hearing on the preliminary injunction applications and a trial on the permanent injunction claims on Friday, May 13, 2022 at 5:00 P.M.

Accordingly,

IT IS HEREBY ORDERED that Defendants shall file a response to Plaintiff’s Complaint for Declaratory and Injunctive Relief (Doc.1) by Monday May 9, 2022. Plaintiff shall file any reply by Thursday, May 12, 2022. IT IS FURTHER ORDERED that a consolidated hearing and trial on Plaintiff’s complaint is set for Friday, May 13, 2022 at 5:00 P.M. in the courtroom of the undersigned. In accordance with 28 U.S.C. § 2284, the Court shall provide notice of the hearing and trial set by this Order to the Missouri Governor and the Missouri Attorney General by Certified Mail service provided by the United States Postal Service.”

Respectfully Submitted,



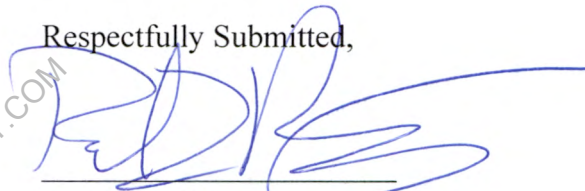
Paul Berry III
Plaintiff, Pro Se
11932 Barbara
Maryland Heights, MO 63043

PBIIIUSA@gmail.com
314-755-9252

CERTIFICATE OF SERVICE

A copy of the foregoing motion shall be served by United States Postal Service delivery to Defendant John (“Jay”) Ashcroft and Defendant State of Missouri by email transmission to each Defendant’s attorney of record at John.Sauer@ago.mo.gov and Jeff.Johnson@ago.mo.gov.

Respectfully Submitted,



Paul Berry III
Plaintiff

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