

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

MARCH FOR OUR LIVES, et al.,

Plaintiffs,

v.

PHIL MCGRANE, in his official  
capacity as Idaho Secretary of State,

Defendant.

Case No. 1:23-cv-00107-AKB

**SCHEDULING ORDER**

**(EXPEDITED TRACK)**

In accordance with the agreements reached in the telephonic scheduling conference held between counsel and the Court on June 22, 2023, and to further the just, speedy, and inexpensive determination of this matter,

**IT IS HEREBY ORDERED THAT** the following deadlines and procedures will govern this litigation:

1. Dispositive Motion Deadline: All dispositive motions shall be filed by **November 13, 2023**<sup>1</sup> This deadline, absent good cause, will **not** be extended even if you are having discovery disputes. Late-filed discovery disputes may not be considered good cause.

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<sup>1</sup> It is this Court's policy to accept only one (1) motion to dismiss and one (1) summary judgment motion per party. If it appears, due to the complexity or numerosity of issues presented, that counsel is unable to address all issues within the twenty-page limit for briefs, Dist. Idaho Loc. R. 7.1(b)(1), then it is appropriate to file a motion for permission to file an over-length brief, rather than filing separate motions for each issue. The Court prefers reviewing one over-length brief in support, one over-length brief in response, and one ten-page reply brief, if any, rather than the panoply of briefs that are generated when multiple motions are filed.

- a. This is the critical event for case management and will dictate when the trial will be set.
  - b. As provided below, a trial setting conference will be scheduled immediately following resolution of all dispositive motions. To facilitate a prompt trial setting, I will make every effort to schedule oral argument within sixty (60) days and issue a decision within thirty (30) days after the oral argument. If a decision is not issued within this time frame, I invite inquiry from counsel as to the status of the decision.
2. Amendment of Pleadings and Joinder of Parties: No further amendments shall be allowed, except for allegations of punitive damages, absent good cause.<sup>2</sup>
  3. Alternative Dispute Resolution Plan: The parties have agreed that ADR is not appropriate in this case.
  4. Discovery Plan: All discovery shall be in accordance with the Federal Rules of Civil Procedure, the Local Rules, and any stipulations in the parties' joint discovery plan, which are incorporated herein by reference. Defendant shall respond to the interrogatories and requests for production propounded by the Plaintiffs on May 10, 2023, on or before **June 29, 2023**.
  5. Clawback: Pursuant to Fed. R. Evid. 502(d), it is hereby **ORDERED** that production of a privileged or work-product-protected document, whether

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<sup>2</sup> The Ninth Circuit has held that motions to amend filed after the Scheduling Order deadline are governed, not by the liberal provisions of Fed. R. Civ. P. 15(a), but instead, by the more restrictive provisions of Fed. R. Civ. P. 16(b) requiring a showing of "good cause." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9<sup>th</sup> Cir. 1992).

inadvertent or otherwise, is not a waiver of privilege or work-product protection in this case or in any other federal or state proceeding.

6. Completion of Discovery: All *factual discovery* will be completed by **October 27, 2023**. These deadlines are for the completion of all discovery; it is not a deadline for discovery requests. Discovery requests must be made far enough in advance of this deadline to allow completion of the discovery by the deadline date. The parties may, by stipulation, agree to defer some trial-related discovery, such as discovery related to damage issues, until after I have ruled on any dispositive issues.
7. Disclosure of Experts:
  - a. The Plaintiff shall disclose the experts intended to be called at trial on or before **September 1, 2023**.
  - b. The Defendant shall disclose the experts intended to be called at trial on or before **October 2, 2023**.
  - c. All rebuttal experts shall be identified on or before **October 16, 2023**.
  - d. All *expert discovery* will be completed by **October 27, 2023**.
8. Rules Governing Disclosures of Expert Witnesses: Within the deadlines for disclosure of expert witnesses set out in the scheduling order, the parties shall also provide--for each expert disclosed--the report described in Fed. R. Civ. P. 26(a)(2)(B), as modified by Local Rule 26.2(b). Supplementation to the expert witness report shall be done in accordance with Fed. R. Civ. P. 26(e)(1). Pursuant to Local Rule 26.2(b), expert witnesses will not be allowed to offer any opinion not disclosed in the mandatory Rule 26 disclosures, supplementation, or

deposition. This includes rebuttal experts. No undisclosed expert rebuttal opinion testimony will be allowed at trial.

9. Oral argument on motion to dismiss: Oral argument on Defendant's Motion to Dismiss (Dkt. 29) shall be held on **August 9, 2023, at 9:00 a.m.**
10. Scheduling of Trial and Pretrial Conference: Plaintiffs' counsel shall contact my Courtroom Deputy, Kimberly Tudela, within one week following the entry of a decision on all pending dispositive motions to arrange for a telephone scheduling conference in which the trial and pretrial conference shall be set.
11. Handling of Discovery Disputes and Non-disposition Motion:
  - a. Typically, I will **not** refer this case to a magistrate judge for resolution of discovery disputes and non-dispositive motions. I will keep these motions on my own docket.
  - b. The parties will strictly comply with the meet and confer requirements of Local Rule 37.1 prior to filing any discovery motions.
  - c. In addition, I will not entertain any written discovery motions until the Court has been provided with an opportunity to informally mediate the parties' dispute. To facilitate that mediation, the attorneys will first contact the law clerk assigned to this case and provide a brief written summary of the dispute and the parties' respective positions. The law clerk may offer suggestions to resolve the dispute without the need of my involvement. If necessary, an off-the-record telephonic conference with me will then be scheduled as soon as possible. I will seek to resolve the dispute during that conference and

may enter appropriate orders based on the conference. I will only authorize the filing of a discovery motion and written briefing if we are unable to resolve the dispute during the conference.

- d. Prior to filing any discovery motions, counsel must certify, not only that they have complied with Local Rule 37.1, but that they have complied with the foregoing procedures.
12. Calendaring Clerk: Scheduling matters and calendar issues may be directed to **Kimberly Tudela**, who may be reached at (208) 334-1473.
13. Docketing Clerk: If you have a docketing question, please contact a docket clerk at (208) 334-1361.



DATED: June 23, 2023

*Amanda K. Brailsford*

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Amanda K. Brailsford  
U.S. District Court Judge