

OCTOBER 25, 2016



DO NOT MISS

Tracking HB2: Policy Watch's comprehensive coverage of North Carolina's sweeping anti-LGBT law

Round One in the battle over voting rights in North Carolina

[Home](#) / [Articles](#) / [News](#) / [Law and the Courts](#) /

Round One in the battle over voting rights in North Carolina

By **Sharon McCloskey** - 12/6/2013 - in Law and the Courts Print This Article



Parties in the three federal lawsuits challenging voting law changes signed into law here in August will appear before U.S. District Judge Thomas Schroeder on December 12 to map out a schedule for proceedings moving forward. And while they've reached agreement on some preliminary litigation matters, the parties are not budging on one critical date: when the case should be tried.

Those challenging the voting changes, including the North Carolina State Conference of the NAACP and the League of Women Voters, say in papers filed with the court yesterday that all preliminary proceedings can be completed in time for a trial in the summer of 2014.

That timing would ensure that changes set to take effect in January are reviewed by the court before the 2014 midterm elections.

But the state defendants claim that such a schedule is unrealistic and are asking for a trial in the summer of 2015.

“These measures need to be reviewed before they go into effect for their legality and their constitutionality,” said Chris Brook of the American Civil Liberties Union North Carolina Legal Foundation, one of the attorneys representing the league. “No one’s right to vote in North Carolina should be unduly burdened without that judicial review.”

Shortly after Gov. Pat McCrory signed House Bill 589 into law in August, the NAACP filed suit in federal court in Greensboro, contending that the voter ID and other provisions of the new law violate the U.S. Constitution and Section 2 of the Voting Rights Act.

The League of Women Voters also filed suit the same day in Greensboro, challenging many of the same changes in voting laws, except for the voter ID provisions, which the group challenged instead in a suit filed in state court in Orange County.

The Justice Department followed in late September with its own action against the state, also filed in Greensboro, and has since asked the court to consolidate the three cases for all purposes.

The challenged voting law changes, many of which will take effect in January 2014 (including the shortening of the early voting period and the elimination of same day registration), impact a wide swath of voters, but affect African American and other minority voters disproportionately, the NAACP and others claim. For example, 70 percent of African Americans who voted in 2012 used early voting, according to Democracy NC.

The groups are urging the court to keep in mind that impact, particularly in light of the upcoming elections. As the NAACP states in its court filing:

The NAACP Plaintiffs submit that the Initial Pretrial Order and overall schedule

in this case must recognize that the provisions challenged of H.B. 589—on their own and in concurrence with each other—will substantially burden the right to vote. For that reason, the claims in this case should be fully addressed in advance of the November 2014 general elections—and far enough in advance for the State to fully comply with this Court’s ruling.

.***

The plaintiffs in the three pending cases have all proposed scheduling which protects the status quo while the court reviews the voting law changes.

In its court filing, the NAACP has asked for a trial on all issues to start on June 23 and has proposed interim disclosure and deposition deadlines leading up to that date.

The League of Women Voters has asked for slightly more time, with a trial to be set for August 11.

The Justice Department is taking a slightly different tack, proposing a compressed period of depositions and other discovery in early 2014 with a view towards asking the court to stay the effective date of the changes if necessary while the midterm elections take place. (The Department has not yet filed its own proposed scheduling order with the court; however, the gist of DOJ's position is described in the league's filing.)

The state defendants, on the other hand, have offered little in the way of concrete dates, telling the court that it is their intention to seek a judgment on the pleadings before the end of January and asking that all proceedings be suspended until the court rules on that request.

Such a delay could push a trial date back as far as 2016, way beyond time frames set by courts in other voting law challenges, according to the league.

In fact, by its own admission the league's proposed schedule is already more generous:

This proposed schedule provides for substantially more time for fact and expert discovery than has been ordered in similar complex election law matters brought under the Voting Rights Act. Plaintiffs' proposed schedule provides for six and a half months (193 days) of fact discovery, including nearly three months (87 days) of expert discovery [280 days total], then an opportunity to file dispositive motions and prepare pre-trial papers such as proposed findings of fact and conclusions of law.

Courts in voting rights challenges elsewhere have been more restrictive, pushing parties to complete pretrial proceedings much faster with a view towards reviewing voting law changes in advance of upcoming elections. For example, in the recent Texas case, *Veasey v. Perry*, the court limited the period to 230 days, and in *Florida v. United States*, 140 days.

The state's proposal would push a resolution of the legality of the voting law changes past the November 2014 elections and way beyond those limits.

"You would think that the state would want to come into court and establish why these voting measures are necessary," Brook said. "It's unfortunate that they don't want to do that."

 Print This Article

     

ABOUT THE AUTHOR



Sharon McCloskey

Sharon McCloskey, former *Courts, Law and Democracy Reporter* for N.C. Policy Watch, writes about the courts and decisions that impact North Carolina residents. McCloskey also wrote for *Lawyers Weekly* and practiced law for more than 20 years.

Follow @sharonmccloskey