

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

THE CHRISTIAN MINISTERIAL ALLIANCE,
et al.,

Plaintiffs,

v.

ASA HUTCHINSON, et al.,

Defendants.

Civil Case No. 4:19-cv-402-JM

**MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR
RECONSIDERATION OF SCHEDULED TRIAL DATE, EXPEDITED BRIEFING, AND A CONFERENCE**

Pursuant to Local Rule 7.2, Plaintiffs respectfully request leave to file the attached reply in support of their Motion for Reconsideration of Scheduled Trial Date, Expedited Briefing, and a Conference. ECF No. 143. Defendants have no position on this motion.

Dated: January 27, 2022

Respectfully submitted,

Natasha Merle
Kristen Johnson
Victoria Wenger
Arielle Humphries
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
Phone: (212) 965-2200
Fax: (212) 226-7592
nmerle@naacpldf.org
kjohnson@naacpldf.org
vwenger@naacpldf.org
ahumphries@naacpldf.org

Michael Skocpol
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
700 14th Street, NW, Suite 600
Washington, DC 20005
mskocpol@naacpldf.org

Arkie Byrd
MAYS, BYRD & ASSOCIATES, PA.
212 Center Street
Suite 700
Little Rock, AR 72201
Phone: (501) 372-6303
Fax: (501) 399-9280
abyrd@maysbyrdlaw.com

Demian A. Ordway
Neil R. Lieberman
Eileen M. DeLucia
HOLWELL SHUSTER & GOLDBERG LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (646) 837-5151
Fax: (646) 837-5150
dordway@hsgllp.com
nlieberman@hsgllp.com
edelucia@hsgllp.com

Philip Urofsky
SHEARMAN & STERLING LLP
401 9th Street, NW, Suite 800
Washington, DC 20004
Phone: (202) 508-8000
Fax: (202) 508-8100
philip.urofsky@shearman.com

Rachel Mossman
SHEARMAN & STERLING LLP
2828 North Harwood Street, 18th Floor
Dallas, TX 75201
Phone: (214) 271-5777
Fax: (214) 271-5778
rachel.mossman@shearman.com

Counsel for Plaintiffs

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**REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR RECONSIDERATION OF SCHEDULED TRIAL
DATE, EXPEDITED BRIEFING, AND A CONFERENCE**

Plaintiffs respectfully request leave to file a reply in support of Plaintiffs' motion for reconsideration. Plaintiffs have conferred with Defendants, and they take no position.

As detailed in Plaintiffs' Motion, delaying trial to the end of April forecloses any opportunity for Plaintiffs and Black voters to elect an appellate judicial candidate of their choice in the May 2022 election, *de facto* denying effective relief for over eight years. Defendants do not even attempt to address the irreparable harm that arises from foreclosing relief before the March filing deadline. Instead, Defendants argue that relief before the May election is unlikely or impossible. This argument is without merit. Even if Arkansas is required ultimately to take legislative action or seek an amendment to its Constitution, that is not a barrier to this Court acting to safeguard Plaintiffs' rights in the meantime.

Under the Supremacy Clause, the implementation of relief for a violation of the Voting Rights Act, like the one here, must take precedence over enforcement of state law that stands in the way of effective relief. *See Katzenbach v. Morgan*, 384 U.S. 641, 646–47 (1966). If this Court

rules that the methods of electing Arkansas Court of Appeals judges and Supreme Court justices violate the Voting Rights Act, then the Court can fashion and order relief that ensures Black voters have an equal opportunity to elect their candidate of choice in this election cycle.¹ The Court is not bound by the unnecessarily prolonged timeline Defendants seem to think they would be entitled to rectify their violations, and the Defendants have provided no support for such an extended period. ECF No. 145 at 3 (arguing changes to method of electing Supreme Court justices *may* require a constitutional amendment, which may take six months).²

Accordingly, Arkansas state law is not a limitation on this Court and does not foreclose the remedy it may order. The remedy could include requiring an expedited proposal of remedial maps or postponement of the May 2022 preferential primary date to November 2022. This would be reasonable given an earlier trial date is necessary to give Plaintiffs an opportunity for meaningful relief ahead of the May 24 election.

Defendants' argument that Plaintiffs have not pushed this case forward is similarly unfounded. Since Plaintiffs filed this case, Defendants have repeatedly presented excuses for why the case could not proceed expeditiously, including work demands in other cases, the Attorney General Office's staffing issues, technological challenges, unknown locations of Defendants' documents, and more.³ Indeed, Defendants interpreted the Court's April 10, 2020 order (ECF No. 42) as halting discovery entirely for multiple months and refused Plaintiffs' numerous attempts to

¹ Defendants concede that any legislative action required for the Court of Appeals could happen quickly, and before the May 2022 election. ECF No. 145 at 2 (no "factual basis for assuming that any such legislative action could *not* be timely completed") (emphasis in original).

² Courts in Alabama and Ohio have recently ordered state legislatures to act quickly to develop new remedial maps. *Milligan v. Merrill*, No. 2:21-cv-01530-AMM, ECF No. 225 at 6 (N.D. Ala. Jan. 24, 2022) (requiring Alabama's electoral maps to be redrawn in 14 days); *Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89 (requiring new congressional-district plan within 30 days).

³ Should the Court wish to see the parties' email exchanges on these issues, Plaintiffs can provide them.

confer on the possibility of even resuming electronic discovery, resulting in Plaintiffs having to bring the issue before the Court in July 2020 (ECF No. 47). Plaintiffs have sought to reasonably accommodate Defendants' concerns in good faith when possible. However, Plaintiffs cannot continue to accommodate their delay where reasonable accommodations, such as a staggered or virtual trial, can ensure the trial is safely conducted ahead of the upcoming elections.

Moreover, Plaintiffs did not unreasonably delay in pursuing relief in this matter. When Plaintiffs filed this case in 2019, there was not a looming election cycle for the appellate court positions at issue in the instant case. One Supreme Court position was elected in the 2020 cycle and none of the Court of Appeals contests in that cycle were in districts that would be impacted by Plaintiffs' proposed districts. In comparison, three Supreme Court seats and four Court of Appeals seats will be decided in 2022—nearly half of all appellate seats, including some that would be impacted by Plaintiffs' proposed districts.

Furthermore, prior to the March 2020 election, Plaintiffs did not have the benefit of the full record that was available in time for the November 2021 and January 2022 trial dates, partly due to Defendants' refusal to engage in discovery as described above. Either date would have reasonably allowed for a remedy before the May 2022 election. It was not until the most recent postponement of the trial date that Plaintiffs now face being shut out of another judicial election.

CONCLUSION

For the reasons in this reply and in Plaintiffs' motion in support of reconsideration, Plaintiffs respectfully request that the Court reconsider the scheduled trial date and schedule a conference.

Dated: January 27, 2022

Respectfully submitted,

Natasha Merle
Kristen Johnson
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Arielle Humphries
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10006
Phone: (212) 965-2200
Fax: (212) 226-7592
nmerle@naacpldf.org
kjohnson@naacpldf.org
vwenger@naacpldf.org
ahumphries@naacpldf.org

Demian A. Ordway
Neil R. Lieberman
Eileen M. DeLucia
HOLWELL SHUSTER & GOLDBERG LLP
425 Lexington Avenue
New York, New York 10017
Telephone: (646) 837-5151
Fax: (646) 837-5150
dordway@hsgllp.com
nlieberman@hsgllp.com
edelucia@hsgllp.com

Michael Skocpol
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
700 14th Street, NW, Suite 600
Washington, DC 20005
mskocpol@naacpldf.org

Arkie Byrd
MAYS, BYRD & ASSOCIATES, PA.
212 Center Street
Suite 700
Little Rock, AR 72201
Phone: (501) 372-6303
Fax: (501) 399-9280
abyrd@maysbyrdlaw.com

Philip Urofsky
SHEARMAN & STERLING LLP
401 9th Street, NW, Suite 800
Washington, DC 20004
Phone: (202) 508-8000
Fax: (202) 508-8100
philip.urofsky@shearman.com

Rachel Mossman
SHEARMAN & STERLING LLP
2828 North Harwood Street, 18th Floor
Dallas, TX 75201
Phone: (214) 271-5777
Fax: (214) 271-5778
rachel.mossman@shearman.com

Counsel for Plaintiffs