

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

DR. DOROTHY NAIRNE, JARRETT
LOFTON, REV. CLEE EARNEST LOWE, DR.
ALICE WASHINGTON, STEVEN HARRIS,
ALEXIS CALHOUN, BLACK VOTERS
MATTER CAPACITY BUILDING
INSTITUTE, and THE LOUISIANA STATE
CONFERENCE OF THE NAACP,

Plaintiffs,

v.

R. KYLE ARDOIN, in his official capacity as
Secretary of State of Louisiana,

Defendant.

Civil Action No. 3:22-cv-00178
SDD-SDJ

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'
JOINT SUPPLEMENTAL NOTICE OF PROPOSED PRE-TRIAL SCHEDULE**

Plaintiffs, Dr. Dorothy Nairne, Jarrett Lofton, Rev. Clee Earnest Lowe, Dr. Alice Washington, Steven Harris, Alexis Calhoun, Black Voters Matter Capacity Building Institute, and the Louisiana State Conference of the NAACP, by and through undersigned counsel, respectfully submit this brief response to *Defendants' Joint Supplemental Notice of Proposed Pre-trial Schedule*. (ECF 101).

As the Court is aware, prior to the status conference with Magistrate Johnson on Thursday, June 29, 2023, the parties were able to reach agreement on most of the deadlines in the proposed

pre-trial schedule. The parties, however, have not reached agreement on the date for disclosure of Defendants' Experts and Expert Reports, and the subsequent dates for rebuttal and surrebuttal expert disclosures and reports that follow. Defendants are seeking an additional six weeks to prepare and submit their expert reports, and Plaintiffs maintain this much additional time is not needed nor appropriate. For the Court's reference, attached here as Exhibit A is the portion of the proposed pre-trial schedule that the parties are still disputing.

Plaintiffs submit this opposition to address Defendants' assertion that Plaintiffs have provided entirely new expert reports and as such Defendants should be allowed an additional six weeks – in addition to the year that they have already had – to prepare expert reports. The reports that Plaintiffs produced last Friday, June 30, 2023, are in fact substantially similar to the reports that Plaintiffs provided in July of 2022.

Plaintiffs' expert Bill Cooper provided as exhibits to his report detailed lists of the different House and Senate districts that changed between the 2022 illustrative maps and the new maps provided with the recent 2023 report.¹ In the Louisiana Legislature, there are 39 Senate Districts and 105 House Districts. Less than 18% of these many districts were changed between the July 2022 and June 2023 illustrative maps. Such changes are hardly extensive. Defendants note that the new maps reassign approximately 35,000 people in the Senate map and approximately 85,000 people in the House map. (ECF 101, at 3). In other words, the new maps reassign the equivalent of half a Senate district and less than two House districts. However, there are over 4.6 million people residing in Louisiana per the 2020 census. These changes involve a very small percentage

¹ Defendants assert that there is some inaccuracy in Mr. Cooper's report but they do not explain what the inaccuracy might be. But regardless, it is hard to understand what impact any inaccuracy in the descriptions in Mr. Cooper's report might have on the work of Defendants' experts. Mr. Cooper provided both shape files and block equivalency files to Defendants for both sets of illustrative maps, so Defendants have all the information they need to properly evaluate Mr. Cooper's actual maps.

of the overall population (0.76% for the Senate map and 1.8% for the House map). Moreover, the purpose of the illustrative maps is to show areas of the states where additional Black Majority Districts can be drawn. The specific areas of the state where new Black Majority Districts are drawn are exactly the same in both the July 2022 illustrative maps and the June 2023 illustrative maps. The changes to the individual districts are minor; far from the “substantial revisions and additions” Defendants describe. *Id.* at 2.

Additionally, Defendants are not correct when asserting that Dr. Handley’s June 2023 report offers new opinions. While Dr. Handley’s report does provide analysis of the new maps, the bulk of her report is the same analysis of the same 15 statewide elections and 19 state legislative elections that were addressed in her original report in July of 2022. Dr. Handley only looked at three new elections in addition to these 34 elections that she originally evaluated. Moreover these elections were all analyzed in seven specific areas of the state. Those seven areas are exactly the same in both reports provided by Dr. Handley. Additionally, Dr. Handley’s process for this analysis, and all of her conclusions, are exactly the same as provided in her July 2022 report.

Finally, Dr. Colten’s supplement is a short document with limited analysis. As noted, there are 39 Senate Districts and 105 House Districts. Dr. Colten’s supplemental report addresses only 2 Senate Districts and 7 House Districts, and is only 1 and ½ pages long. This is not an extensive new analysis.

Defendants assert that Plaintiffs had close to a year to prepare their reports but equally the Defendants have had close to a year to prepare their reports. All of Plaintiffs’ reports are prepared under the standards laid out long ago in *Thornburg v. Gingles*, 478 U.S. 30 (1986). That long precedent was upheld completely in *Allen v. Milligan*, 143 S. Ct. 1487 (2023). Defendants have

had a year to prepare reports to address Plaintiffs' reports under that standard. There are no new or novel legal theories at issues in this case.

Given that the law has not changed and the limited differences between Plaintiffs' June 2022 and the July 2023 reports, the Court should deny Defendants' request for an additional six weeks to prepare expert reports in this matter. Plaintiffs respectfully request that the Court issue a scheduling order with the expert disclosure dates proposed by the Plaintiffs in the Exhibit A attachment provided here.

Date: July 4, 2023

Respectfully submitted,

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**Pro Hac Vice Motion Forthcoming

CERTIFICATE OF SERVICE

I certify that on July 4, 2023 this document was filed electronically on the Court's electronic case filing system. Notice of the filing will be served on all counsel of record through the Court's system.

/s/ Sarah Brannon

EXHIBIT A

Event	Before Stay	Time Remaining Upon Issuance of Stay	Plaintiffs' Proposal	Time After Lifting of Stay	Defendants' Proposal
Defendants Expert Disclosures	9/2/2022	2 days	7/6/2023	15 days	8/4/2023
Defendants Expert Reports	9/9/2022	9 days	7/21/2023	30 days	8/11/2023
Plaintiffs' Rebuttal Expert Disclosures	No date set		7/25/2023	5 weeks	8/14/2023
Plaintiffs' Rebuttal Expert Reports	9/23/2022	23 days	8/4/2023	6 weeks	8/25/2023
Defendants' Sur-Rebuttal Expert Disclosure	No date set		8/8/2023	6 ½ weeks	8/29/2023
Defendants' Sur-Rebuttal Expert Reports	10/7/2022	37 days	8/11/2023	7 weeks	9/8/2023