

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FAIR FIGHT ACTION, *et al.*

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:18-cv-05391-SCJ

**RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO OPEN
DISCOVERY AND FOR A SCHEDULING CONFERENCE**

When Plaintiffs first attempted to serve discovery outside of the requirements of the Local Rules, this Court gave clear instructions:

“[d]iscovery and all related deadlines will proceed in accordance with the Local Rules of this Court as well as the Federal Rules of Civil Procedure...”

[Doc. 51]. Three months later, Plaintiffs again seek to conduct discovery outside the Local Rules and the Federal Rules of Civil Procedure in their “Motion to Open Discovery and For A Scheduling Order” (“Motion”) [Doc. 70].

While Plaintiffs’ Motion is permissible under the rules, it requests a discovery track and timeline that are unreasonable and outside of the Local Rules of this Court and the Federal Rules of Civil Procedure. Plaintiffs’ Motion does so without providing any basis to explain what about this case

requires changing those basic rules of procedure beyond a restatement of Plaintiffs' characterization of this case. It also seeks to consolidate discovery in a manner that is wholly unnecessary and puts undue pressure on all parties. This Court should deny Plaintiffs' Motion and allow this case to proceed in accordance with the rules that govern civil litigation. As explained below, Defendants believe that the parties can work together to bring a joint proposed schedule to this Court.

I. Plaintiffs' delays should not create an emergency on the part of this Court or Defendants.

Plaintiffs seek to open discovery "as soon as possible" because they now seek relief "in time for upcoming elections." [Doc. 71, p. 4]. But the timeline of this case so far shows it is Plaintiffs, not the Court or Defendants, that have delayed the progress of this case.

Plaintiffs filed this case on November 27, 2018, [Doc. 1], provided waivers of service, and did not file their Amended Complaint until February 19, 2019, [Doc. 41], some six days after the Rule 26(f) Conference on February 13, 2019.¹ The fact that Plaintiffs waited nearly three months to file their

¹ Defendants note that, in spite of a pending motion to dismiss concerning jurisdictional issues, Defendants—in good faith—agreed to conduct a Rule 26(f) Conference. Given the expanded breadth of the Amended Complaint, that decision appears to be premature.

current Complaint does not create a duty on all other parties or this Court to accelerate discovery on an unrealistic schedule.

Plaintiffs are correct that this Court enjoys wide discretion in fashioning discovery. Nevertheless, the Local Rules are clear that “discovery **shall** commence thirty days after the appearance of the first defendant by answer to the complaint.” N.D. Ga. LR 26.2 [emphasis added]. Even in *Doe v. Dominique*, the case upon which Plaintiffs’ Motion principally relies, the Court only permitted expedited discovery because the plaintiff there was seeking a preliminary injunction, unlike the Plaintiffs in this case:

However, a party seeking expedited discovery in advance of a Rule 26(f) conference has the **burden of showing good cause for the requested departure** from usual discovery procedures. The good cause standard may be satisfied where a party seeks a preliminary injunction, or where the moving party has asserted claims of infringement and unfair competition.

No. 1:13-cv-04270-HLM, 2014 U.S. Dist. LEXIS 189153 at *10 (N.D.

Ga. Jan. 3, 2014) (emphasis added and internal citations and quotations omitted). In cases of a preliminary injunction, an expedited discovery plan makes more sense as the parties are seeking to resolve a dispute on the merits quickly.

In this case, Plaintiffs have not filed a preliminary injunction or made any other showing of “good cause” sufficient to depart from the

usual procedures. Instead, they put forth the conclusory statement that opening discovery now is required to “protect fundamental constitutional rights and provide relief for Plaintiffs and Georgia voters in time for upcoming elections.” [Doc. 70, p. 4]. But Plaintiffs fail to articulate why maintaining the current discovery schedule ordered by this Court would prejudice any of their rights or prevent any relief for upcoming elections.

Further, the Rule 26(f) conference was based on the original complaint. The Amended Complaint is significantly broader in scope, involves over twice as many parties, and raises issues that were not addressed in the Rule 26(f) conference. Put simply, another conference is not only advisable to maintain a smooth discovery process, it should be mandated.

Finally, expediting the discovery schedule as Plaintiffs seek would prejudice the Defendants. Plaintiffs obviously wish to move discovery forward quickly. But Plaintiffs’ proposed schedule accelerates expert discovery and requires expedited responses to dispositive motions. Neither make sense in this case. Given the nature of Plaintiffs’ claims, it will be difficult for Defendants to know which experts would be required until Plaintiffs’ expert disclosures.

Defendants also expect motions for summary judgment will significantly narrow or eliminate all of the issues in this case. Neither the Court nor the parties are benefited by preventing a full, regular briefing process for those motions.

II. Defendants propose a more reasonable discovery schedule.

Defendants believe the parties can reach a reasonable discovery schedule without the Court's intervention and will confer with Plaintiffs to address a discovery schedule in accordance with the rules. (The parties currently have a conference scheduled for tomorrow morning.) But because Plaintiffs propose a schedule in their Motion, Defendants propose a schedule that would meet the needs of this case:

Case Event	Date
Answer to the Amended Complaint	June 13, 2019
Start of Fact Discovery	July 15, 2019
Close of Fact Discovery	October 15, 2019
Opening Expert Reports ²	October 21, 2019
Rebuttal Expert Reports	November 4, 2019
Reply Expert Reports (if any)	November 11, 2019
Dispositive Motions	December 11, 2019
Responses to Dispositive Motions	January 9, 2020
Replies to Dispositive Motions	January 30, 2020
Last Day to File Daubert Motions	On last day to submit Pretrial Order
Last Day to Submit Pretrial Order	30 days after Court rules on motions for summary judgment
Trial	TBD

Regarding a potential protective order, Defendants believe they will be able to reach an agreement with Plaintiffs regarding the parameters of that order and can submit a joint proposal to the Court by the time discovery begins.

III. Conclusion.

This Court should deny Plaintiffs' Motion and allow the parties to work toward a reasonable schedule for submission to the Court.

² Opening expert reports are due for any particular issue on which a party bears the burden of proof.

Respectfully submitted this 25th day of June, 2019.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO OPEN DISCOVERY AND FOR A SCHEDULING CONFERENCE was prepared double-spaced in 13-point Century Schoolbook pursuant to Local Rule 5.1(C).

/s/ Bryan P. Tyson
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CERTIFICATE OF SERVICE

This certifies that I have this date electronically filed the foregoing **RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO OPEN DISCOVERY AND FOR A SCHEDULING CONFERENCE** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record listed on the case.

This 25th day of June, 2019.

/s/ Bryan P. Tyson
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