

EXHIBIT A

Callahan, Sam

From: McKnight, Katherine L. <kmcknight@bakerlaw.com>
Sent: Monday, December 20, 2021 4:51 PM
To: Theodore, Elisabeth; Steed, Terence; Jones, Stanton; Callahan, Sam; zzz.External.akhanna@elias.law; zzz.External.Imadduri@elias.law; zzz.External.jshelly@elias.law; zzz.External.gwhite@elias.law; allison@southerncoalition.org; Hilary H. Klein; Alyssa Riggins; Mitchell D. Brown; Katelin Kaiser; jeffloperfido@scsj.org; Adam Doerr; Narendra Ghosh; Brennan, Stephanie; Burton Craige; Erik R. Zimmerman; Majmundar, Amar; Paul Smith; Phil Strach; Stephen Feldman; Tom Farr; Babb, Mary Carla (Hollis); Braden, E. Mark; Raile, Richard; Lewis, Patrick T.; John Branch; Schauf, Zachary C.; Hirsch, Sam; Amunson, Jessica Ring; Bracey, Kali N.; Mittal, Urja R.; Molodanof, Olivia; Boer, Tom; Martin Warf; Greg McGuire; Nate Pencook; Cella, John
Subject: RE: NCLCV v. Hall - evidentiary and scheduling issues

External E-mail

Elisabeth,

Thank you for your e-mail.

At the outset, we understand your e-mail to be “on behalf of all plaintiffs,” meaning: on behalf of all plaintiffs from the *Harper* case, the *NCLCV* case, and the *Common Cause* case. Counsel for all plaintiffs are copied on this e-mail; please let us know by 10am tomorrow morning if this is not correct. We do not intend to re-open negotiations for separate plaintiffs if we do not hear from plaintiffs’ counsel after this time.

Regarding your specific proposals (italicized), here are Legislative Defendants’ responses to each:

First, Plaintiffs will take zoom depositions of defendants’ rebuttal experts on December 30 and 31. Please make sure that your rebuttal experts are available on those dates. If you could let us know before December 28 how many rebuttal experts you intend to disclose, that would be helpful as we try to schedule court reporters.

1. In our view it is premature to schedule any depositions. As a courtesy, we can offer that we intend to have 2 fact witnesses and 3 or 4 expert witnesses testify at trial and we will make sure these witnesses are available for deposition next week. There likely will be conflicts and issues with covering attorneys—for both sides—and we assure you that we will work in good faith to schedule and resolve conflicts.
2. Could you return the courtesy and tell us how many fact witnesses and expert witnesses all Plaintiffs intend to put on the stand at trial? This will at least help everyone try to start slotting times for depositions while allowing the parties until the due dates in the Scheduling Order to identify witnesses.

Second, and in light of the Court’s scheduling order contemplating the exchange of evidence in the form of witness affidavits, we assume that fact witness affidavits disclosed on Dec. 23 will be admissible as evidence at trial without regard to hearsay objections, so long as the parties have an opportunity to depose the fact witness, even if the witness doesn’t testify at trial. Please let us know by Dec. 21 if you disagree, because we will need to seek relief from the Court -- given the time constraints, it is not feasible to offer live testimony from our plaintiffs at trial. We would reserve the right to offer other, non-hearsay objections to such affidavits.

1. These affidavits can be categorized by substance and we believe they should be treated differently:
 - a. For fact witness testimony limited to issues of standing, Legislative Defendants are amenable to accepting “Standing Testimony” by affidavit without hearsay objection even if those witnesses do not

testify at trial about issues of standing. Legislative Defendants offer this solution while reserving their right to challenge standing in this case.

- b. For fact witness testimony other than “Standing Testimony,” meaning, testimony about facts of the map drawing process or other fact testimony that goes to the substance of the claims at issue as opposed to just standing, Legislative Defendants cannot agree to allow that testimony by affidavit to be admissible as evidence at trial. In a case of this import, we believe that all fact witnesses offering substantive testimony about the claims at issue must provide their testimony live in court.

And will defendants agree to a mutual deadline of Dec. 24 at 5 pm for the parties to let each other know which fact witnesses who have offered affidavits they intend to depose?

1. We can agree to this as long as Plaintiffs identify by Dec. 23 at 5 pm which fact witnesses offering affidavits they intend to have testify live at trial.

Third, one of the Harper Plaintiffs’ experts, Jowei Chen, is moving his family to a new state on January 4. It would be difficult or potentially impossible for him to testify in person on January 3 and get back in time to make this move. We would like to offer his trial testimony and cross-examination via live video on January 3. Could you let us know promptly if you have any objection?

1. Legislative Defendants object to Dr. Chen providing expert witness testimony remotely.

Fourth, the deadline for a fact stipulation is December 31. In addition to the categories of information in the Common Cause fact stipulation from 2019, Plaintiffs were intending as of now to offer stipulations relating to the release of the census data. Could you let us know whether you would be amenable to those categories of stipulation? Are there any stipulations that you intend to offer beyond those of the same nature as Common Cause?

1. We believe there is room for agreement here. We submitted a fairly detailed stipulation as to election results in the 2019 Common Cause case and believe we can replicate that here with the addition of 2020 election results. As to the release of Census data, could you send us a proposal? Again, we think we can find agreement on the basic facts of the release of that data but need to see the proposal.

Fifth, will all parties stipulate to the admission of transcripts of the legislative hearings and meetings?

1. We can agree to this but need to make sure we are on the same page about which hearings and meetings and which transcriptions. Could you let us know?

Sixth, consistent with the 2019 Common Cause case and given our time constraints, we assume all parties will agree that each side can offer into evidence the expert report of any expert who testifies live at trial and is available for cross-examination at trial. If you disagree, please let us know by December 21 so that we can seek clarity from the court.

1. We can agree that each side can offer into evidence the expert report of any expert who testifies live (non-remote) at trial and is available for cross-examination at trial.

Thank you for starting this discussion.

Kate

Katherine L. McKnight

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From: Theodore, Elisabeth <Elisabeth.Theodore@arnoldporter.com>

Sent: Sunday, December 19, 2021 3:53 PM

To: Steed, Terence <Tsteed@ncdoj.gov>; Jones, Stanton <Stanton.Jones@arnoldporter.com>; Callahan, Sam <Sam.Callahan@arnoldporter.com>; akhanna@elias.law; Imadduri@elias.law; jshelly@elias.law; gwhite@elias.law; allison@southerncoalition.org; Hilary H. Klein <hilaryhklein@scsj.org>; Alyssa Riggins <alyssa.riggins@nelsonmullins.com>; Mitchell D. Brown <mitchellbrown@scsj.org>; Katelin Kaiser <katelin@scsj.org>; jeffloperfido@scsj.org; Adam Doerr <ADoerr@robinsonbradshaw.com>; Narendra Ghosh <nghosh@pathlaw.com>; Brennan, Stephanie <Sbrennan@ncdoj.gov>; Burton Craige <bcraige@pathlaw.com>; Erik R. Zimmerman <ezimmerman@robinsonbradshaw.com>; Majmundar, Amar <amajmundar@ncdoj.gov>; Paul Smith <psmith@pathlaw.com>; Phil Strach <phil.strach@nelsonmullins.com>; Stephen Feldman <SFeldman@robinsonbradshaw.com>; Tom Farr <tom.farr@nelsonmullins.com>; Babb, Mary Carla (Hollis) <MCBabb@ncdoj.gov>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Lewis, Patrick T. <plewis@bakerlaw.com>; John Branch <john.branch@nelsonmullins.com>; Schauf, Zachary C. <ZSchauf@jenner.com>; Hirsch, Sam <SHirsch@jenner.com>; Amunson, Jessica Ring <JAmunson@jenner.com>; Bracey, Kali N. <KBracey@jenner.com>; Mittal, Urja R. <UMittal@jenner.com>; Molodanof, Olivia <olivia.molodanof@hoganlovells.com>; Boer, Tom <tom.boer@hoganlovells.com>; Martin Warf <martin.warf@nelsonmullins.com>; Greg McGuire <greg.mcguire@nelsonmullins.com>; Nate Pencook <nate.pencook@nelsonmullins.com>; Cella, John <John.Cella@arnoldporter.com>

Subject: NCLCV v. Hall - evidentiary and scheduling issues

[External Email: Use caution when clicking on links or opening attachments.]

Dear all:

This email is on behalf of all plaintiffs. Given that deadlines and trial are fast approaching, we wanted to identify dates for deposition of your experts, raise a few other logistical and evidentiary issues for discussion, and perhaps set up a time for a telephonic meet and confer if that would be helpful.

First, Plaintiffs will take zoom depositions of defendants' rebuttal experts on December 30 and 31. Please make sure that your rebuttal experts are available on those dates. If you could let us know before December 28 how many rebuttal experts you intend to disclose, that would be helpful as we try to schedule court reporters.

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Sixth, consistent with the 2019 Common Cause case and given our time constraints, we assume all parties will agree that each side can offer into evidence the expert report of any expert who testifies live at trial and is available for cross-examination at trial. If you disagree, please let us know by December 21 so that we can seek clarity from the court.

If you could let us know your position on all these items promptly, we would appreciate it. As I mentioned, we are happy to set up a telephonic meet and confer.

Thanks,
Elisabeth

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