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STATE OF NORTH CAROLINA
COUNTY OF WAKE

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SUPERIOR COURT DIVISION
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WAKE COUNTY, C.S.C.

BY _____

COMMON CAUSE, et al.,

Plaintiffs,

v.

DAVID LEWIS, IN HIS OFFICIAL CAPACITY AS SENIOR
CHAIRMAN OF THE HOUSE SELECT COMMITTEE ON
REDISTRICTING, et al.,

Defendants.

**PLAINTIFFS' MOTION FOR
A ONE-WEEK EXTENSION
OF TIME FOR REBUTTAL
EXPERT REPORTS**

Pursuant to this Court's Order of May 1, 2019, Plaintiffs respectfully request a one-week extension of time to serve their rebuttal expert reports. In support, Plaintiffs state as follows:

1. Under the Stipulated Case Management Order, Plaintiffs' expert reports were originally due on March 22; Defendants' expert reports were due on April 30; and Plaintiffs' rebuttal expert reports were due on May 31.
2. The Court extended the deadline for Plaintiffs' expert reports to April 8, "largely as a result of [Legislative Defendants'] own delays in providing complete discovery responses to Plaintiffs." 5/1/19 Order at 7.
3. On April 22, Legislative Defendants moved for a two-week extension of time to serve their expert reports.
4. The Court held a hearing on Legislative Defendants' extension motion on April 30. While Plaintiffs do not yet have a transcript or audio recording of the hearing, Plaintiffs recall that Legislative Defendants offered their consent to a reciprocal extension for Plaintiffs' rebuttal expert reports, if Legislative Defendants received an extension for their own reports.

5. On the evening of April 30, Legislative Defendants served six expert reports. Intervenor Defendants served one expert report.

6. On May 1, the Court granted Legislative Defendants' extension motion in part, giving Legislative Defendants a one-week extension, until May 7, for their expert reports. In its Order, the Court stated that "Plaintiffs may request, at any time prior to their respective deadline, to extend the deadline to serve Plaintiffs' expert rebuttal reports by up to seven (7) days." 5/1/19 Order at 9. The Court further stated that "[a]ll other deadlines in the case scheduling order shall remain unchanged." *Id.*

7. On May 7, Legislative Defendants served three further expert reports—two "supplemental" reports and one full report replacing the expert's prior April 30 report.

8. Good cause exists for a reciprocal one-week extension for Plaintiffs' rebuttal expert reports. The Stipulated Case Management Order provided one full month for Plaintiffs' rebuttal reports, and Plaintiffs have done nothing to warrant reducing their time. It would be unfair for Legislative Defendants' own one-week extension for their expert reports to eat into the time for Plaintiffs' rebuttal reports. Plaintiffs' experts were not able to begin work on their rebuttal reports in earnest until after May 7, because they did not know whether and to what extent Legislative Defendants' expert reports would change or even be replaced entirely. Indeed, the Court's May 1 Order specifically authorized Plaintiffs to seek a reciprocal one-week extension for their rebuttal reports.

9. Plaintiffs have conferred with all Defendants about this extension request, and their respective positions are as follows:

- a. State Defendants consent to the request.

- b. Legislative Defendants oppose Plaintiffs' request for a one-week extension. They have stated that they will not consent to such an extension absent other changes to the Stipulated Case Management Order extending other deadlines. In particular, Legislative Defendants have explained that they will refuse to produce any of their experts for depositions until after Plaintiffs' rebuttal reports are served, even though Rule 26(b)(4) authorizes the deposition of an expert at any time after the expert's own report has been served. Based on this refusal, Legislative Defendants have asserted that a one-week extension for Plaintiffs' rebuttal reports would necessitate an extension of the deadline for experts depositions, which in turn would require additional changes to extend other deadlines. Plaintiffs disagree with Legislative Defendants' position. Legislative Defendants should not be able to use the extension for their expert reports to disrupt the rest of the negotiated schedule as set forth in the Stipulated Case Management Order.
- c. Intervenor Defendants stated that they "object to the requested extension with regard to Plaintiffs' rebuttal to the report served by Intervenor-Defendants, but take no position with regard to the extension requested for Plaintiffs' rebuttals to the reports served by the Legislative Defendants." This approach does not make sense. Plaintiffs will serve one set of rebuttal expert reports addressing both Legislative Defendants' and Intervenor Defendants' expert reports, parts of which substantially overlap.

For the foregoing reasons, Plaintiffs respectfully ask that the Court grant a one-week extension for Plaintiffs' rebuttal expert reports, from May 31 until June 7, and that all other deadlines in the Stipulated Case Management Order remain unchanged.

Respectfully submitted this the 9th day of May, 2019

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by email, addressed to the following persons at the following addresses which are the last addresses known to me:

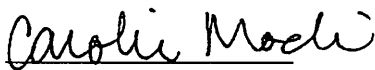
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This the 9th day of May, 2019.


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