

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:16-CV-1164

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, WILLIAM COLLINS,
ELLIOTT FELDMAN, CAROL FAULKNER
FOX, ANNETTE LOVE, MARIA PALMER,
GUNTHER PECK, ERSLA PHELPS, JOHN
QUINN, III, AARON SARVER, JANIE
SMITH SUMPTER, ELIZABETH TORRES
EVANS, and WILLIS WILLIAMS,

Plaintiffs,

v.

ROBERT A. RUCHO, in his official capacity
as Chairman of the North Carolina Senate
Redistricting Committee for the 2016 Extra
Session and Co-Chairman of the Joint Select
Committee on Congressional Redistricting;
DAVID R. LEWIS, in his official capacity as
Chairman of the North Carolina House of
Representatives Redistricting Committee for
the 2016 Extra Session and Co-Chairman of
the Joint Select Committee on Congressional
Redistricting;
TIMOTHY K. MOORE, in his official
capacity as the Speaker of the North Carolina
House of Representatives;
PHILIP E. BERGER, in his official capacity as
the President Pro Tempore of the North
Carolina Senate;
A. GRANT WHITNEY, JR., in his official
capacity as Chairman and acting on behalf of
the North Carolina State Board of Elections;

MOTION FOR EXTENSION
OF TIME

(Fed. R. Civ. P. 6(b) and 15(a)(3))

THE NORTH CAROLINA STATE BOARD
OF ELECTIONS; and

THE STATE OF NORTH CAROLINA

Defendants.

NOW COMES defendants Robert A. Rucho, David R. Lewis, Timothy K. Moore, Philip E. Berger, A. Grant Whitney, Jr., the North Carolina State Board of Elections and the State of North Carolina¹, by and through undersigned counsel, and without waiving any defense available to them move the Court pursuant to Rule 6(b) of the Federal Rules of Civil Procedure to extend the time within which they must answer or otherwise respond to plaintiffs' complaint for an additional thirty-nine (39) days, up to and including 28 November 2016.

In support thereof, defendant shows the Court that:

1. On Thursday, 22 September 2016, plaintiffs filed their complaint against defendants in the United States District Court for the Middle District of North Carolina. By this action, plaintiffs challenge the congressional districting plan enacted by the North Carolina General Assembly on 19 February 2016.

2. On Friday, 23 September 2016, summonses were issued to defendants by the Court.

3. On Monday, 26 September 2016, the summonses and complaint were served on defendants A. Grant Whitney, Jr., the North Carolina State Board of Elections, and the State of North Carolina. As a result, these defendants are currently required to answer or otherwise respond to the complaint on or before 17 October 2016.

4. The time for these defendants to answer or otherwise respond to the complaint, which is presently due on or before 17 October 2016, has not yet expired.

5. On Monday, 26 September 2016, counsel for plaintiffs left a voicemail message for the undersigned indicating a desire to discuss the case. The undersigned returned the telephone call of plaintiffs' counsel first thing Tuesday morning, 27

¹ All defendants other than the North Carolina State Board of Elections and the State of North Carolina are sued in their official capacities only.

September 2016, and left a voicemail message indicating that the undersigned assumed that plaintiffs' counsel wanted to know whether defendants would waive service pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The undersigned further indicated that he was authorized to waive service on behalf of defendants, and asked plaintiffs' counsel to let him know if there were other matters that needed to be discussed.

6. A few hours after leaving this voicemail message, the undersigned learned that process servers were at the Legislative Building in Raleigh to serve some of the individual defendants. The undersigned also learned for the first time that defendants A. Grant Whitney, Jr., the North Carolina State Board of Elections, and the State of North Carolina had been served the day before. The undersigned then sent plaintiffs' counsel an email inquiring about the process servers, and asking why defendants had not been allowed an opportunity to waive service. Plaintiffs' counsel responded by stating that plaintiffs were concerned about moving this case as quickly as possible and believed that there was a need to expedite service and response time.² Plaintiffs' counsel further stated that plaintiffs therefore believed it was necessary to obtain personal service on defendants unless the undersigned or someone else was authorized to accept service on defendants' behalf. At that point, the undersigned immediately began inquiring of the defendants who had not yet been served whether he had authority to accept on their behalf.

7. On the evening of 27 September 2016, before the undersigned had received authority to accept service from all defendants who had not yet been served or communicated to plaintiffs' counsel that he had such authority, process servers went to the homes of defendants Philip E. Berger and David R. Lewis.

8. Upon learning that a process server had gone to defendant Berger's house, the undersigned emailed plaintiffs' counsel to express concern that attempts were being made to serve at their homes defendants who are members of the North Carolina General Assembly and who were sued only in their official capacities. The undersigned also expressed concern that plaintiffs had not allowed undersigned adequate time to determine whether he had authority to accept service for defendants who had not been served.³ Counsel for plaintiffs indicated that she would immediately try to stop process servers from continuing attempts to serve defendants and would await word from the undersigned the next day as to whether he was authorized to accept service. The process

² Defendants note that this action was filed over seven (7) months after enactment of the challenged congressional districting plan.

³ Because defendants A. Grant Whitney, Jr., the North Carolina State Board of Elections and the State of North Carolina had been served on Monday, 26 September 2016, the countdown on the time for a joint response by defendants to the complaint had already begun to run.

server at defendant Berger's home did not in fact serve him. Plaintiffs' counsel was unable to contact the process server attempting to serve defendant Lewis, and defendant Lewis was served by leaving the summons and a copy of the complaint with a family member at his home in Harnett County at approximately 10:00 P.M.

9. On the morning of Wednesday, September 28 2016, the undersigned informed plaintiffs' counsel that he was authorized to accept service on behalf of defendants who had not yet been served. The undersigned in fact accepted service on behalf of those defendants later that day.

10. Defendant has not previously requested an extension of time to serve an answer or otherwise respond to the complaint.

11. Had plaintiff requested waiver of service as contemplated by Rule 4(d) of the Federal Rules of Civil Procedure, defendant would have had sixty (60) days rather than twenty-one (21) days in which to answer or other respond to the complaint.

12. Defendants, and their counsel, are currently involved in numerous matters related to the 2016 General Election. In addition, they are engaged in other election-related litigation, including another action that challenges the 2016 congressional districting plan on grounds of partisan gerrymandering: *Common Cause v. Rucho* (M.D.N.C. No. 1:16-cv-1026, filed 5 August 2016). An answer or other responsive pleading in that action is currently due on 31 October 2016. While *Common Cause* raises claims similar to the claims raised in this action, additional time is still needed, especially in light of the imminence of the 2016 General Election, to evaluate the allegations specific to this action, consult with the defendants and to determine the appropriate response.

13. The undersigned has conferred with counsel for plaintiff, who has indicated that plaintiffs do not consent to this motion.

WHEREFORE, defendants respectfully pray that the Court extend the date by which they must answer or otherwise respond to plaintiffs' complaint by thirty-nine (39) days, up to and including 28 November 2016.

This the 12th day of October, 2016.

NORTH CAROLINA
DEPARTMENT OF JUSTICE

/s/ Alexander McC. Peters
Alexander McC. Peters
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James Bernier, Jr.
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North Carolina Department of Justice
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CERTIFICATE OF SERVICE

I certify that on 12 October 2016, I electronically filed the foregoing MOTION FOR EXTENSION OF TIME and Proposed ORDER with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel and parties of record.

This the 12th day of October, 2016.

/s/ Alexander McC. Peters
Alexander McC. Peters
Senior Deputy Attorney General

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A. GRANT WHITNEY, JR., in his official
capacity as Chairman and acting on behalf of
the North Carolina State Board of Elections;

ORDER

THE NORTH CAROLINA STATE BOARD
OF ELECTIONS; and

THE STATE OF NORTH CAROLINA

Defendants.

THIS CAUSE coming on before the undersigned on motion of Defendants, Robert A. Rucho, David R. Lewis, Timothy K. Moore, Philip E. Berger, A. Grant Whitney, Jr., the North Carolina State Board of Elections, and the State of North Carolina, for a 39-day extension of time in which to answer or otherwise respond to plaintiff's complaint, and it appearing to the Court that the motion is timely and for good cause shown;

NOW, THEREFORE, it is ordered that the time for defendants to answer or otherwise respond to plaintiffs' complaint is extended up to and including 28 November 2016.

This the _____ day of October, 2016.

UNITED STATES CLERK/JUDGE PRESIDING