

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
ILLINOIS EASTERN DIVISION**

DAN McCONCHIE, in his official capacity as
Minority Leader of the Illinois Senate and
individually as a registered voter, *et al.*,

Plaintiffs,

V.

IAN K. LINNABARY, *et al.*,

Defendants.

Case No. 1:21-CV-03091

Circuit Judge Michael B. Brennan
Chief Judge Jon E. DeGuilio
Judge Robert M. Dow, Jr.

Three-Judge Court

Pursuant to 28 U.S.C. § 2284(a)

Magistrate Beth W. Jantz

McCONCHIE PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR EXTENSION OF TIME TO FILE RESPONSE SUBMISSION

The *McConchie* Plaintiffs (“Plaintiffs”) hereby submit this response in opposition to Defendants’ Motion for Extension of Time of File Response Submission (“Motion”) (Dkt. 152), which Defendants frame as “modest” and for “just two days.” Mot. at 3. In reality, however, Defendants’ Motion—which they raised with Plaintiffs for the first time at 3:34 pm yesterday and demanded a response by the end of the day (to which Plaintiffs promptly consented as long as their reply time was not shortened), *see Ex. A*—is not simply a two-day extension request, but instead an apparent attempt by Defendants to undercut the Panel’s Order granting Plaintiffs a reply brief in the first place. As explained below, Defendants’ Motion, if granted, would leave Plaintiffs and their experts only five days to prepare their reply brief and expert reports, with four of those days being: Thanksgiving Day, the Friday after Thanksgiving, Saturday and Sunday. In other words, the “just two days” Defendants are seeking would come entirely out of the seven days that the Panel has already granted Plaintiffs for their reply, leaving Plaintiffs only one normal business day for their reply.

Accordingly, and for the reasons explained in more detail below, Plaintiffs oppose Defendants' Motion, but in the alternative, consent to a two-day extension for Defendants as long as Plaintiffs' seven-day period for their reply is maintained (*i.e.*, moving the reply deadline from November 29 to December 1):

First, Defendants are improperly seeking to re-litigate the Panel's Order granting Plaintiffs a reply brief through the guise of an extension motion that would have the effect of severely limiting the amount of time for Plaintiffs and their experts to prepare their replies. The issue of a reply brief is not new, having been addressed by the parties, Magistrate Judge Jantz and the Panel for some time. Indeed, prior to the November 5, 2021 status hearing before the Panel, the parties spent considerable time discussing and **agreeing** to the scheduling for all remedial briefs. The parties agreed that Defendants would be given an additional two days, affording them 12 days for their response (*i.e.*, from November 10 to November 22; Dkt. 149) rather than the ten days that the Court previously ordered (*i.e.*, from November 8 to November 18; Dkt. 131), and that Plaintiffs would be given seven days to reply. Dkt. 149. The Court approved this schedule. Dkt. 149. Defendants never mention this extra two days for their response brief as part of their Motion when they recite other extensions that were given. Now, Defendants are seeking an **extra** two days. As one would expect, and as a matter of professional courtesy, Plaintiffs consented as long as they still would receive their seven days for reply. Remarkably, Defendants rejected this condition and have taken the position that the two extra days they are seeking should come entirely out of Plaintiffs' seven days for their reply. Plainly, this is an attempt by Defendants to hamstring Plaintiffs and their experts from preparing proper replies by giving them only five days to do so, despite Defendants having 14 days for their response, and despite the Panel having granted Plaintiffs seven days to reply (without objection by Defendants at the November 5 hearing).

Second, it is worth noting that the five days that Defendants are proposing that Plaintiffs have for their reply would consist almost entirely of the Thanksgiving Holiday: Thanksgiving Day, the day after Thanksgiving and the weekend. The only normal business day that Plaintiffs and their experts would have for their reply is the actual day on which it would be due, Monday, November 29, 2021. While the parties and the Court have all worked diligently to advance this important case in an expeditious manner, leaving only one business day for a reply brief is an extreme proposal by nearly any standard.

* * *

For the foregoing reasons, Plaintiffs respectfully request that Defendants' Motion be denied, or in the alternative if it is granted, that Plaintiffs still be given the existing seven days for their reply (*i.e.*, making the reply deadline December 1 rather than November 29).

Dated: November 17, 2021

s/ Phillip A. Luetkehans
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Senate and individually as a registered voter,
Jim Durkin, in his official capacity as Minority
Leader of the Illinois House of Representatives*

Respectfully submitted,

/s/ Charles E. Harris, II
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and individually as a registered voter, James Rivera, Anna De La Torre, Dolores Diaz, Felipe Luna Jr., Salvador Tremillo, Christopher Romero, the Republican Caucus of the Illinois Senate, and the Republican Caucus of the Illinois House of Representatives

/s/ Ricardo Meza

Ricardo Meza

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Counsel for Plaintiffs Dan McConchie, in his capacity as Minority Leader of the Illinois Senate and individually as a registered voter, Jim Durkin, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, James Rivera, Anna De La Torre, Dolores Diaz, Felipe Luna Jr., Salvador Tremillo, Christopher Romero, the Republican Caucus of the Illinois Senate, and the Republican Caucus of the Illinois House of Representatives

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/s/ John G. Fogarty

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Counsel for Plaintiff, Illinois Republican Party

EXHIBIT A

Panoff, Thomas

From: Panoff, Thomas
Sent: Tuesday, November 16, 2021 9:51 PM
To: 'Elizabeth.Yandell@lw.com'; jgreenbaum@lawyerscommittee.org; eherrera@maldef.org; pal@lbgalaw.com; Harris II, Charles E.; FFernandez-delCastillo@MALDEF.org; agandhi@clccrul.org; ewright@cooley.com
Cc: Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Sheridan.Caldwell@lw.com; dbruce@powerrogers.com; mjkasper60@mac.com; heather@wiervaght.com; AVaught@hinshawlaw.com; dhulett@maldef.org; Gvegasamuel@MALDEF.org; achablani@clccrul.org; jdrayton@cooley.com; erosenberg@lawyerscommittee.org; MKutcher@cooley.com
Subject: RE: Extension RequestGriselda Vega Samuel <Gvegasamuel@MALDEF.org>

Libby,

When you note our opposition in your motion, we believe that it would misrepresent our position if you refer, as you do below, to "an additional two days for Plaintiffs' replies." We are not seeking any additional days. We are only requesting that we still get the seven days that the parties already presented to the panel and that the panel ordered. Your position would leave us with only five days, four of which are federal holidays or weekend days. We offered you the professional courtesy of consenting to your extension, but your proposal would be solely at our expense by taking two of our seven days.

Tom

From: Elizabeth.Yandell@lw.com <Elizabeth.Yandell@lw.com>
Sent: Tuesday, November 16, 2021 9:33 PM
To: jgreenbaum@lawyerscommittee.org; Panoff, Thomas <TPanoff@mayerbrown.com>; eherrera@maldef.org; pal@lbgalaw.com; Harris II, Charles E. <CHarris@mayerbrown.com>; FFernandez-delCastillo@MALDEF.org; agandhi@clccrul.org; ewright@cooley.com
Cc: Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Sheridan.Caldwell@lw.com; dbruce@powerrogers.com; mjkasper60@mac.com; heather@wiervaght.com; AVaught@hinshawlaw.com; dhulett@maldef.org; Gvegasamuel@MALDEF.org; achablani@clccrul.org; jdrayton@cooley.com; erosenberg@lawyerscommittee.org; MKutcher@cooley.com
Subject: RE: Extension RequestGriselda Vega Samuel <Gvegasamuel@MALDEF.org>

****EXTERNAL SENDER****

Tom, Jon:

Thank you for your responses. However, our response is the same as my email to Ernest just below: we cannot agree to an additional two days for Plaintiffs' replies, which have already been extended from Judge Jantz's original schedule, because the expedited schedule in this case leaves just one week between Plaintiffs' current reply due date and any hearing or trial. Your proposals would shorten that window to just two business days.

We will note that McConchie and East St. Louis NAACP oppose.

Having just seen Ernest's response (on a different chain), we will also mark Contreras as opposing.

Best,
Libby

From: Jon Greenbaum <jgreenbaum@lawyerscommittee.org>
Sent: Tuesday, November 16, 2021 7:04 PM

To: Panoff, Thomas <TPanoff@mayerbrown.com>; Yandell, Elizabeth (Bay Area) <Elizabeth.Yandell@lw.com>; Ernest Herrera <eherrera@maldef.org>; pal@lbgalaw.com; Harris II, Charles E. <CHarris@mayerbrown.com>; FFernandez-delCastillo@MALDEF.org; Ami Gandhi <agandhi@clccrul.org>; ewright@cooley.com
Cc: Berkowitz, Sean (CH) <Sean.Berkowitz@lw.com>; Smith, Colleen (SD) <Colleen.Smith@lw.com>; Caldwell, Sheridan (Bay Area) <Sheridan.Caldwell@lw.com>; dbruce@powerrogers.com; mjkasper60@mac.com; heather@wiervaught.com; AVaught@hinshawlaw.com; Denise Hulett <dhulett@maldef.org>; Gvegasamuel@MALDEF.org; Aneel Chablani <achablani@clccrul.org>; Drayton, Joe <jdrayton@cooley.com>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Kutcher, Matthew <MKutcher@cooley.com>
Subject: RE: Extension RequestGriselda Vega Samuel <Gvegasamuel@MALDEF.org>

I also wanted to note that East St. Louis NAACP also intends to take expert depositions regardless of the opposition and reply deadlines.

From: Jon Greenbaum

Sent: Tuesday, November 16, 2021 9:53 PM

To: Panoff, Thomas <TPanoff@mayerbrown.com>; Elizabeth.Yandell@lw.com; Ernest Herrera <eherrera@maldef.org>; pal@lbgalaw.com; Harris II, Charles E. <CHarris@mayerbrown.com>; FFernandez-delCastillo@MALDEF.org; Ami Gandhi <agandhi@clccrul.org>; ewright@cooley.com
Cc: Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Sheridan.Caldwell@lw.com; dbruce@powerrogers.com; mjkasper60@mac.com; heather@wiervaught.com; AVaught@hinshawlaw.com; Denise Hulett <dhulett@maldef.org>; Gvegasamuel@MALDEF.org; Aneel Chablani <achablani@clccrul.org>; Drayton, Joe <jdrayton@cooley.com>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Kutcher, Matthew <MKutcher@cooley.com>
Subject: RE: Extension RequestGriselda Vega Samuel <Gvegasamuel@MALDEF.org>

Adding some of the East St. Louis NAACP counsel.

We take the same position for the McConchie plaintiffs and for the same reasons. We oppose if Defendants will not agree to a two day extension of time for Plaintiffs' reply.

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From: Panoff, Thomas <TPanoff@mayerbrown.com>

Sent: Tuesday, November 16, 2021 9:47 PM

To: Elizabeth.Yandell@lw.com; Ernest Herrera <eherrera@maldef.org>; pal@lbgalaw.com; Harris II, Charles E. <CHarris@mayerbrown.com>; FFernandez-delCastillo@MALDEF.org; Jon Greenbaum <jgreenbaum@lawyerscommittee.org>; Ami Gandhi <agandhi@clccrul.org>; ewright@cooley.com
Cc: Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Sheridan.Caldwell@lw.com; dbruce@powerrogers.com;

mjkasper60@mac.com; heather@wiervaught.com; AVaught@hinshawlaw.com; Denise Hulett <dhulett@maldef.org>; Gvegasamuel@MALDEF.org

Subject: RE: Extension RequestGriselda Vega Samuel <Gvegasamuel@MALDEF.org>

[EXTERNAL EMAIL] This email originated outside the organization. Do not click any links or open any attachments unless you can verify the legitimacy.

Libby,

On behalf of the McConchie plaintiffs, we will consent to a two day extension for defendants as long as we also still get our seven days for our reply (i.e., our reply would be due on Dec. 1 rather than Nov. 29 if you file on Nov. 24), which seems more than reasonable since four of our seven days for reply would be either federal holidays for Thanksgiving or weekend days.

Tom

From: Elizabeth.Yandell@lw.com <Elizabeth.Yandell@lw.com>

Sent: Tuesday, November 16, 2021 8:24 PM

To: eherrera@MALDEF.org; pal@lbgalaw.com; Panoff, Thomas <TPanoff@mayerbrown.com>; Harris II, Charles E. <CHarris@mayerbrown.com>; FFernandez-delCastillo@MALDEF.org; jgreenbaum@lawyerscommittee.org; agandhi@clccrul.org; ewright@cooley.com

Cc: Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Sheridan.Caldwell@lw.com; dbruce@powerrogers.com; mjkasper60@mac.com; heather@wiervaught.com; AVaught@hinshawlaw.com; dhulett@MALDEF.org; Gvegasamuel@MALDEF.org

Subject: RE: Extension RequestGriselda Vega Samuel <Gvegasamuel@MALDEF.org>

****EXTERNAL SENDER****

Hi Ernest,

Thank you for your prompt responses below.

Defendants intend to defer to the panel's preference on whether to hold a hearing, trial, or decide the case on the papers. Therefore, we cannot join in your proposal below. We also cannot agree to any additional time for Plaintiffs' replies. This is due primarily to the hearing being scheduled to potentially begin just one week from the current reply deadline. We also note that Plaintiffs already received an extension of time for your replies from the schedule Judge Jantz originally set for them. In light of the fact that Defendants consented to the two-day extension you requested for your submissions (at the end of a months-long period to prepare them), we hope you will agree to two more days for us to respond to all three Plaintiffs. Please let us know either way.

Best,
Libby

From: Ernest Herrera <eherrera@MALDEF.org>

Sent: Tuesday, November 16, 2021 4:28 PM

To: Yandell, Elizabeth (Bay Area) <Elizabeth.Yandell@lw.com>; pal@lbgalaw.com; tpanoff@mayerbrown.com; charris@mayerbrown.com; Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>; jgreenbaum@lawyerscommittee.org; agandhi@clccrul.org; ewright@cooley.com

Cc: Berkowitz, Sean (CH) <Sean.Berkowitz@lw.com>; Smith, Colleen (SD) <Colleen.Smith@lw.com>; Caldwell, Sheridan (Bay Area) <Sheridan.Caldwell@lw.com>; dbruce@powerrogers.com; mjkasper60@mac.com;

heather@wiervaught.com; AVaught@hinshawlaw.com; Denise Hulett <dhulett@MALDEF.org>; Griselda Vega Samuel <Gvegasamuel@MALDEF.org>

Subject: RE: Extension RequestGriselda Vega Samuel <Gvegasamuel@MALDEF.org>

Upon further thought, Contreras Plaintiffs propose the following: given that the extension would bring us closer to a potential hearing date of Dec. 6, we propose that we agree that the remedial proceedings can be conducted entirely on the papers. This would be in exchange for agreement on the extension.

Ernest I. Herrera

Staff Attorney

Pronouns: he/him/his

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From: Ernest Herrera

Sent: Tuesday, November 16, 2021 4:08 PM

To: 'Elizabeth.Yandell@lw.com' <Elizabeth.Yandell@lw.com>; pal@lbgalaw.com; tpanoff@mayerbrown.com; charris@mayerbrown.com; Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>; Griselda Vega Samuel <Gvegasamuel@MALDEF.org>; jgreenbaum@lawyerscommittee.org; agandhi@clccrul.org; ewright@cooley.com
Cc: Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Sheridan.Caldwell@lw.com; dbruce@powerrogers.com; mjkasper60@mac.com; heather@wiervaught.com; AVaught@hinshawlaw.com

Subject: RE: Extension Request

Hi Libby:

Contreras Plaintiffs do not oppose as long as it includes a 2-day extension for Plaintiffs to file a reply.

Ernest I. Herrera

Staff Attorney

Pronouns: he/him/his

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From: Elizabeth.Yandell@lw.com [<mailto:Elizabeth.Yandell@lw.com>]

Sent: Tuesday, November 16, 2021 3:34 PM

To: pal@lbgalaw.com; tpanoff@mayerbrown.com; charris@mayerbrown.com; Ernest Herrera

<eherrera@MALDEF.org>; Francisco Fernandez-del Castillo <FFernandez-delCastillo@MALDEF.org>; Griselda Vega Samuel <Gvegasamuel@MALDEF.org>; jgreenbaum@lawyerscommittee.org; agandhi@clccrul.org; ewright@cooley.com
Cc: Sean.Berkowitz@lw.com; Colleen.Smith@lw.com; Sheridan.Caldwell@lw.com; dbruce@powerrogers.com; mjkasper60@mac.com; heather@wiervaught.com; AVaught@hinshawlaw.com

Subject: Extension Request

Counsel,

Given the volume of Plaintiffs' collective submissions and the fact that there are nine expert reports to respond to, Defendants will seek a two-day extension of our due date to respond, from November 22 to November 24. We will need to indicate whether Plaintiffs consent or oppose this extension. We plan to file this request later today, so please let us know if we have your consent for this modest request as soon as possible.

Thank you very much,

Libby

Libby Yandell

Pronouns: she/her/hers

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