

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(RICHMOND DIVISION)

PAGE, *et al.*,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

Civil Action No. 3:13-cv-00678-REP-LO-AKD

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR EXTENSION OF TIME**

Plaintiffs Dawn Curry Page, Gloria Personhuballah, and James Farkas (collectively, the “Plaintiffs”) have sought third party discovery from Robert B. Bell, William Robert Janis, and Christopher Marston, including a subpoena *duces tecum* served on Mr. Marston (“Movant”) in March 2014. On March 28, 2014, Mr. Marston filed Objections to and moved to quash the subpoena *duces tecum* on grounds, *inter alia*, that the documents sought were protected by legislative and attorney-client privilege. On April 1, 2014, counsel for Movant and Plaintiffs and other parties to the above-captioned action conferred with the Court by telephone. At that time, counsel for Mr. Marston estimated that approximately 800 pages of documents were potentially responsive to the subpoena *duces tecum*. The Court directed that counsel for Mr. Marston prepare a privilege log identifying those documents asserted to be privileged. The parties to the proceeding agreed to a schedule for production of the privilege log and briefing on the motion to quash and a motion to compel.

On April 2, 2014, the Court issued an Order directing that the privilege log be produced by April 7, 2014; that Plaintiffs file their opposition to the motion to quash and their motion to

compel on April 9, 2014; that Movant file their reply in support of the motion to quash by April 11, 2014; that Movant file their opposition to the motion to compel by April 14, 2014; and that Plaintiffs file their reply in support of the motion to compel by April 16, 2016 (the “Order”).

Counsel for Mr. Marston immediately commenced preparation of the privilege log and was on track for completion and service of the log by the deadline set forth in the Order. However, on Sunday, April 6, at 11:46 a.m., counsel learned for the first time of the existence of 1,568 additional pages of documents that were not yet in counsel’s possession. The additional documents nearly triple the volume of documents to be reviewed and logged. Counsel immediately contacted a vendor to process the documents and mobilized a team of attorneys to assist in the review of the documents, quadrupling the size of the legal team working on the matter. Many members of the team worked late into Sunday evening (even Monday morning) and continue their efforts as of the filing of this Motion. Even with these extraordinary efforts, the team will not be able to complete the review and privilege log for all of the additional 1,568 pages of documents prior to the deadline of 5 p.m. on April 7, 2014, set forth in the Order. Thus, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, Mr. Marston seeks an extension of time by which to produce a complete¹ privilege log and commensurate extensions of time for the remaining deadlines in the Order so that Plaintiffs are not prejudiced by an extension of time for the privilege log.

Counsel for Mr. Marston contacted Plaintiffs’ counsel on Sunday afternoon by telephone and email to explain the change in circumstances and seek an agreed extension of the deadlines in the Order in light of the substantial additional volume of documents to be reviewed for the privilege log so that Plaintiffs would have a complete log prior to filing their opposition to the motion to quash and motion to compel. Counsel for Mr. Marston also suggested that the

¹ Mr. Marston will produce a partial privilege log by 5 p.m. on April 7, 2014.

privilege log initially be limited to those documents concerning congressional (and not state) redistricting. Plaintiffs' counsel responded on Monday, April 7, 2014, and during a telephone call between Mr. Devaney and Ms. Walrath, counsel for Plaintiffs agreed to the proposal that the privilege log initially be limited to documents relevant to congressional redistricting. This accommodation substantially reduces the burden on Mr. Marston, but even so, additional time is necessary to complete the log of additional documents. As of the time of that telephone call, at approximately 1 p.m. EDT, Plaintiffs' counsel did not have authority to respond regarding the requested extension of time. As of 4:30 p.m. of the date of the filing of this Motion, counsel for Mr. Marston had not yet received a response from Plaintiff's counsel and so felt compelled to request the relief sought herein.

There is good cause for the requested extension of time. Counsel for Mr. Marston was unaware of the existence of additional potentially responsive documents until the eve of the existing deadline and has taken extraordinary measures in an attempt to still meet the existing deadline. The revised schedule proposed by Mr. Marston is as follows:

April 10, 2014	Privilege Log
April 14, 2014	Opposition to Motion to Quash and Motion to Compel
April 16, 2014	Reply in Support of Motion to Quash
April 18, 2014	Opposition to Motion to Compel
April 22, 2014	Reply in Support of Motion to Compel
April 30, 2014	Oral Argument

This schedule does not prejudice any party to the above-captioned proceeding and, given the alternate date for oral argument set forth in the Court's order of April 4, 2014, does not appear to materially impact the Court's schedule. Additionally, on April 4, 2014, counsel for Plaintiffs notified Movant that Plaintiffs were withdrawing the notices of deposition of Robert B. Bell and

William Robert Janis. This narrows the issues to be addressed in briefing and oral argument and will ease the burden on both the parties and the Court even with a modified schedule.

II. CONCLUSION

For the reasons set forth above, Movant respectfully request that his Motion be granted.

Dated: April 7, 2014

Respectfully submitted,

CHRISTOPHER MARSTON

By Counsel

/s/ Jennifer M. Walrath

Frederick W. Chockley, III (VSB No. 21982)

Jennifer M. Walrath (VSB No. 75548)

BAKER HOSTETLER LLP

1050 Connecticut Avenue, NW

Suite 1100

Washington, DC 20036

Telephone: 202.861.1500

Facsimile: 202.861.1783

fchockley@bakerlaw.com

jwalrath@bakerlaw.com

Of counsel:

E. Mark Braden

BAKER & HOSTETLER LLP

1050 Connecticut Avenue, NW

Suite 1100

Washington, DC 20036

Telephone: 202.861.1500

Facsimile: 202.861.1783

mbraden@bakerlaw.com

*Attorneys for Robert B. Bell, William Robert Janis,
and Christopher Marston*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of April, 2014, a copy of the foregoing Memorandum of Points and Authorities in Support of Motion for Extension of Time was filed and served pursuant to the Court's electronic filing procedures using the Court's CM/ECF system on the following counsel of record:

John Kuropatkin Roche
John Michael Devaney (admitted *pro hac vice*)
Kevin Hamilton (admitted *pro hac vice*)
Marc Erik Elias (admitted *pro hac vice*)
PERKINS COIE LLP
700 13th Street, NW
Washington, DC 20005
melias@perkinscoie.com
jroche@perkinscoie.com
jdevaney@perkinscoie.com
khamilton@perkinscoie.com
Attorneys for Plaintiffs

Mike Melis
OFFICE OF THE ATTORNEY GENERAL
900 E. Main Street
Richmond, VA 23219
mmelis@oag.state.va.us
Attorneys for Defendants

Cullen Dennis Seltzer
SANDS ANDERSON PC
1111 E. Main Street
24th Floor
P.O. Box 1998
Richmond, VA 23219-1998
cseltzer@sandsanderson.com
Attorneys for Interested Parties
Clerk of the Virginia Senate,
Clerk of the Virginia House, and
Division of Legislative Services

John Matthew Gore (admitted *pro hac vice*)

Jonathan Andrew Berry

Michael Anthony Carvin

JONES DAY

51 Louisiana Avenue, NW

Washington, DC 20001

macarvin@jonesday.com

jmgore@jonesday.com

jberry@jonesday.com

Attorneys for Intervenor Defendants

Eric Cantor, Robert Wittman,

Bob Goodlatte, Frank R. Wolf,

Randy Forbes, Morgan Griffith,

Scott Rigell, and Robert Hurt

/s/ Jennifer M. Walrath

Frederick W. Chockley, III (VSB No. 21982)

Jennifer M. Walrath (VSB No. 75548)

BAKER HOSTETLER LLP

1050 Connecticut Avenue, N.W.

Suite 1100

Washington, D.C. 20036

Tel.: 202-861-1680

Fax: 202-861-1783

fchockley@bakerlaw.com

jwalrath@bakerlaw.com

*Attorneys for Robert B. Bell, William Robert Janis,
and Christopher Marston*

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ORDER GRANTING MOTION TO FOR EXTENSION OF TIME

Upon consideration of the Motion for Extension of Time (the “Motion”) filed herein, the Court having considered the Motion, the Memorandum of Points and Authorities in support thereof, any opposition thereto, and any oral argument thereon, and it appearing to the Court after due deliberation that the relief requested is appropriate, it is by the Court this ____ day of April, 2014,

ORDERED, that the Motion be, and it is hereby, granted; and it is further

ORDERED, that the deadlines set forth in the Court’s Order dated April 2, 2014, and the Court’s Order dated April 4, 2012, be modified, and are hereby, as follows:

- 1) No later than April 10, 2014, third-party Christopher Marston shall serve a privilege log in the manner set forth in the Court’s Order dated April 2, 2014;
- 2) By April 14, 2014, Plaintiffs shall file their motion to compel production of documents; by April 18, 2014, the third parties shall file their response; and by April 22, 2014, the Plaintiffs shall file their reply;

- 3) By April 14, 2014, Plaintiffs shall file their opposition to third parties' Motion to Quash Subpoenas to Robert B. Bell, William Robert Janis, and Christopher Marston and/or for Protective Order (ECF No. 61), and by April 16, 2014, the third-parties shall file their reply; and
- 4) Oral argument on the Motion to Quash shall be held at 10 a.m. on April 30, 2014.

The portions of the Orders dated April 2 and April 4, 2014, other than the deadlines modified as set forth above shall remain in place.

It is so ORDERED.

Hon.
United States Judge

Copies to:

Frederick W. Chockley, III (VSB No. 21982)
Jennifer M. Walrath (VSB No. 75548)
BAKER HOSTETLER LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036
Telephone: 202.861.1500
Facsimile: 202.861.1783
fchockley@bakerlaw.com
jwalrath@bakerlaw.com

Of counsel:
E. Mark Braden
BAKER HOSTETLER LLP
1050 Connecticut Avenue, NW
Suite 1100
Washington, DC 20036
Telephone: 202.861.1500
Facsimile: 202.861.1783
mbraden@bakerlaw.com

*Attorneys for Robert B. Bell, William Robert Janis,
and Christopher Marston*

John Kuropatkin Roche
John Michael Devaney (admitted *pro hac vice*)
Kevin Hamilton (admitted *pro hac vice*)
Marc Erik Elias (admitted *pro hac vice*)
PERKINS COIE LLP
700 13th Street, NW
Washington, DC 20005
melias@perkinscoie.com
jroche@perkinscoie.com
jdevaney@perkinscoie.com
khamilton@perkinscoie.com

Attorneys for Plaintiffs

Mike Melis
OFFICE OF THE ATTORNEY GENERAL
900 E. Main Street
Richmond, VA 23219
mmelis@oag.state.va.us

Attorneys for Defendants

Cullen Dennis Seltzer
SANDS ANDERSON PC
1111 E. Main Street
24th Floor
P.O. Box 1998
Richmond, VA 23219-1998
cseltzer@sandsanderson.com

*Attorneys for Interested Parties
Clerk of the Virginia Senate,
Clerk of the Virginia House, and
Division of Legislative Services*

John Matthew Gore (admitted *pro hac vice*)
Jonathan Andrew Berry
Michael Anthony Carvin
JONES DAY
51 Louisiana Avenue, NW
Washington, DC 20001
macarvin@jonesday.com
jmgore@jonesday.com
jberry@jonesday.com

*Attorneys for Intervenor Defendants
Eric Cantor, Robert Wittman,
Bob Goodlatte, Frank R. Wolf,
Randy Forbes, Morgan Griffith,
Scott Rigell, and Robert Hurt*