UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

DAWN CURRY PAGE, et al., *Plaintiffs*, *v.* VIRGINIA STATE BOARD OF ELECTIONS, et al., *Defendants*.	Civ. No. 3:13-cv-678

REPLY MEMORANDUM IN SUPPORT OF INTERESTED PARTIES' VIRGINIA HOUSE OF DELEGATES' AND VIRGINIA SENATE'S MOTION FOR AN EXTENSION OF TIMETO COMPLY WITH THIS COURT'S JUNE 5, 2015 ORDER

INTRODUCTION

Exercising its primary jurisdiction responsibly, the General Assembly seeks a modest extension of time to comply with this Court's June 5th order. The General Assembly requested the extension so that it could receive any further guidance from the U.S. Supreme Court. The General Assembly also requested an extension to not risk mooting the Intervener-Defendants' appeal seeking to vindicate the constitutionality of the General Assembly's duly enacted plan.

Rather than identify any prejudice to the Plaintiffs or Defendants, the Plaintiffs and Defendants—without citation—contend that the General Assembly is not properly before the Court, despite having primary jurisdiction to enact a remedial map and is subject to this Court's order; that the Intervener-Defendants' direct appeal is not a sufficient reason to grant the extension; that only the Intervener-Defendants have an interest in protecting the merits of its appeal; that Governor McAuliffe's calling of a special session moots the General Assembly's

request; that there is no prejudice to the General Assembly maintaining the September 1 deadline; and extending the deadline to November 16 imposes an undue burden on this Court to draw a remedial map if need be.

For the reasons that follow, this Court should reject these arguments and grant the requested relief.

I. THE GENERAL ASSEMBLY IS PROPERLY BEFORE THE COURT

Plaintiffs, but not Defendants, contend that because the General Assembly is not a party to the litigation, it cannot request an extension of time to comply with this Court's injunction. (Pls.' Br. at 2) (Dkt. No. 197). This unsupported assertion is odd because the Court's order squarely mandates that the *General Assembly* comply with the Court's order. (Dkt. No. 171) (*filed* June 5, 2015). That order stated:

> That the matter of providing a redistricting plan to remedy the constitutional violations found in this case is referred to the Virginia General Assembly for exercise of its primary jurisdiction. The Virginia General Assembly should exercise this jurisdiction as expeditiously as possible, but no later than September 1, 2015, by adopting a new redistricting plan.
>
> (Dkt. No. 171).

Fed. R. Civ. P. 65 limits the application of injunctions to the parties, agents and employees of parties, and those who participate with the parties or are in active concert with the parties. Fed. R. Civ. P. 65(d)(2); *see also Wright v. County School Bd.*, 309 F. Supp. 671, 676-77 (E.D. Va. 1970) (noting that Rule 65(d) "[f]ixes the scope of valid orders, and terms in a decree exceeding the rule are of no effect."). For the injunction to be valid, the General Assembly must be one of these and therefore the General Assembly can request an extension of time to comply with the injunction. *Cf. Flame S.A. v. Indus. Carriers, Inc.*, 24 F. Supp. 3d 513, 516 (E.D. Va. 2014) (ruling that non-parties who are adversely affected by a judgment may file a motion to void the judgment under Fed. R. Civ. P. 60(b)(4)); *Grace v. Bank Leumi Trust Co*., 443 F.3d 180, 188 (2d

Cir. 2006) (holding that a non-party who is strongly affected by a court's ruling can bring a Rule 60(b) motion). It would be a strange rule of law indeed that the entity compelled to comply with a Court order could not also seek an extension of time to comply with that order.[1]

Additionally, the Fourth Circuit has held that an entity has standing to challenge a court order when that court's order aggrieves the non-party entity, even when that entity did not intervene. *See Kenny v. Quigg*, 820 F.2d 665, 668 (4th Cir. 1987) ("[I]t has been held that a person who had an interest in the cause litigated and participated in the proceedings actively enough to make him privy to the record may appeal despite the fact that he *was not named in the complaint* a*nd did not intervene.*") (citing 9 J. Moore, B. Ward & J. Lucas, Moore's Federal Practice para. 203.06, at 3-23 (2d ed. 1987) (emphasis added)). As the rule implies, a non-party may participate in the district court proceedings without being named in the complaint or intervening.

The Fourth Circuit is not alone in permitting non-parties to modify or dissolve injunctions. *See AAL High Yield Bond Fund v. Deloitte & Touche LLP*, 361 F.3d 1305, 1310 n.10 (11th Cir. 2004) ("Another instance in which a nonparty may be sufficiently bound by a judgment to qualify as a party for purposes of appeal is when the nonparty is purportedly bound by an injunction.") (citations omitted); *United States v. Kirschenbaum*, 156 F.3d 784, 794 (7th Cir. 1998) (holding that a non-party who did not intervene in the district court could pursue an appeal of an injunction stating that"[N]on-parties who are bound by a court's equitable decrees have a right to move to have the order dissolved... rather than face the possibility of a contempt proceeding."); *Rodney v. Piper Capital Management (In re Piper Funds),* 71 F.3d 298, 301 (8th Cir. 1995) ("A nonparty normally has standing to appeal when it is adversely affected by an

[1] Furthermore, it is certainly standard practice that a person who is not a party to the litigation but is the subject to a subpoena under Fed. R. Civ. P. 45 can file a motion to quash the subpoena without otherwise intervening. *See* Fed. R. Civ. P. 45(d). Again, it would be an odd result that the subject of a court order under Fed. R. Civ. P. 65 could not similarly request an extension of

injunction."); I*n re Complaint & Petition of Triton Asset Leasing GmbH*, 719 F. Supp. 2d 753, 761 (S.D. Tex. 2010) ("The Fifth Circuit has, therefore, specifically recognized instances in which non-parties may seek relief from a court because these parties have a personal stake in the litigation before it.").

Additionally, as the Supreme Court has often repeated, the legislature has a sovereign right to draw redistricting maps. *See, e.g., Growe v. Emison*, 507 U.S. 25, 34 (1993) ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State *through its legislature* or other body, rather than of a federal court.") (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975) (emphasis added). The General Assembly is therefore properly before this Court seeking a modest extension of time to exercise its sovereign right. *See Upham v. Seamon*, 456 U.S. 37, 41 (1982) (ruling that from the beginning the Supreme Court has recognized that reapportionment is primarily a legislative duty and that state legislatures have primary jurisdiction over legislative reapportionment).

As Defendants appear to concede, the General Assembly is properly before the Court. The Court should consider the merits of its request for an extension of time to comply with its June 5, 2015 order.

II. INTERVENER-DEFENDANTS' DIRECT APPEAL OF THIS COURT'S MAJORITY OPINION IS SUFFICIENT TO EXTEND THE DEADLINE TO COMPLY WITH THIS COURT'S ORDER.

Plaintiffs and Defendants contend that the Intervener-Defendants' direct appeal of the two-judge majority opinion to the U.S. Supreme Court is insufficient to merit an extension of time to comply with this Court's June 5, 2015 order. Pls.' Oppn. Br. at 3 (Dkt. No. 197); Defs.' Oppn. Br. at 6-7 (Dkt. No. 199). They further contend that this Court has already considered Intervener-

Defendants' request to extend the deadline to comply with the June 5, 2015 order. Pls.' Oppn. Br. at 3 (Dkt. No. 197); Defs.' Oppn. Br. at 7 (Dkt. No. 199) This is inaccurate.

First, although true this Court was aware of Intervener-Defendants' objection to Plaintiffs' request that the General Assembly comply with this Court's order by September 1, (Intervener-Defendants' Oppn. Br. at 17) (Dkt. No. 151), this Court did not deny the request with prejudice or on the merits. As Intervener-Defendants noted, they were objecting to Plaintiffs' "[p]assing request that the Court set a remedial deadline of September 1, 2015 if it determines anew that the Enacted Plan violates Shaw." *Id*. At the very end of its brief, the Intervener-Defendants' object to Plaintiffs' passing request with two paragraphs. *Id*. at 17-18. This Court therefore did not reject the Intervener-Defendants' request on the merits. Rather, as Judge Payne noted, the denial was because Intervener-Defendants' objection to Plaintiffs' request effectively was a "[p]remature suggestion for a stay pending appeal. If there is an appeal, a motion for stay can be filed and the applicable law respecting stays can be applied after both sides are heard from." *Page v. Va. State Bd. of Elections*, 2015 U.S. Dist. LEXIS 73514 at *120 n.47 (E.D. Va. June 5, 2015) (Payne, J, dissenting).[2] The General Assembly now comes before this Court requesting that the deadline for compliance be extended and now both sides have been heard.

Second, this Court previously rejected the same argument the Plaintiffs and Defendants now make, for the second time, namely, that it was well known that Intervener-Defendants would file a direct appeal to the U.S. Supreme Court and therefore the filing of the appeal did not constitute a 'changed circumstance' warranting an extension of time to comply with the injunction. Pls.' Oppn. Br. at 3-4 (Dkt. No. 197); Defs.' Oppn. Br. at 7 (Dkt. No. 199). In its February 9, 2015

[2] The Defendants noted Judge Payne's dissent, but only quoted the first sentence of footnote 47. The Defendants neglected to quote the second and third sentence of that footnote. Defs.' Oppn. Br. at 8 n.17 (Dkt. No. 199).

filing, the Defendants claimed that there was no change in circumstances warranting an extension of time to comply with the injunction. (Dkt. No. 133 at 8-9). Defendants claimed that the Intervener-Defendants' direct appeal to the U.S. Supreme Court was "predictable and likely accounted for by the Court when it imposed the April 1 deadline." *Id*.at 9. Despite this argument from Defendants, this Court granted Intervener-Defendants' request for an extension. (Dkt. No. 137) (Mem. Op.). This Court should similarly grant the General Assembly's request for an extension.

Third, Plaintiffs contend that because the Intervener-Defendants have themselves not sought a stay pending appeal, the General Assembly cannot do so. Pls. Oppn. Br. at 6 (Dkt. No. 197). But this ignores the reality that the Intervener-Defendants are defending the constitutionality of a congressional map that the General Assembly duly enacted. The General Assembly is of course interested in seeing its duly enacted legislation declared constitutional. Compelling the General Assembly to meet prior to September 1 to enact a remedial map before the deadline could moot the Intervener-Defendants direct appeal to the U.S. Supreme Court, an appeal that is seeking to vindicate the General Assembly's duly enacted congressional map. Compelling the General Assembly to potentially moot the Intervener-Defendants' appeal harms the General Assembly's sovereign interest to see its duly enacted plan implemented. *See, e.g., Bush v. Vera*, 517 U.S. 952, 978 (1996) ("[The Supreme Court] adhere[s] to our longstanding recognition of the importance in our federal system of each State's sovereign interest in implementing its redistricting plan.").

Fourth, the Plaintiffs advance the wrong standard that a litigant must satisfy to obtain an extension of time to comply with an injunction. Pls.' Oppn. Br. at 2-3 (Dkt. No. 197). Plaintiffs contend that the General Assembly must establish a change in circumstances since this Court's

June 5, 2015 order that is 'extreme and unexpected.' *Id*. at 3. That is not the standard. Rather, as stated in the General Assembly's opening brief, the standard is a flexible one and an injunction should be modified where the movant "[e]stablish[es] that a significant change in circumstances warrants revision of the decree." *Thompson v. United States HUD*, 404 F.3d 821, 827 (4th Cir. 2005). A significant change in the facts is one which makes compliance with the injunction substantially more onerous or detrimental to the public interest. *Id*. Once this is established, the injunction must be appropriately tailored to the circumstances. *Id*. The General Assembly satisfied these standards. Op. Br. at 7-8, 10, 11-12 (Dkt. No. 193). As noted above, it is substantially onerous for the General Assembly to comply with this Court's September 1 deadline because it forces the General Assembly to potentially moot an appeal seeking to vindicate its own duly enacted congressional plan; forces the General Assembly to act without the benefit of the Supreme Court's guidance; and is detrimental to the public because it risks requiring the General Assembly to hold not one, but two special sessions of the legislature at significant cost the Commonwealth each time.

Fifth, the Defendants contend that this Court's previous extension of its April 1, 2015 deadline to comply was because of the Supreme Court's consideration of the *Alabama Legislative Black Caucus v. Alabama* case. (Defs.' Oppn. Br. at 6). Because the Supreme Court is no longer considering the *Alabama* case, there are no changed circumstances warranting an extension. *Id*. at 6-7. This is inaccurate.

This Court first acknowledged that the circumstances had changed since the injunction was entered. Mem. Op. at 2 (Dkt. No. 137). The very first event that this Court noted was that the Intervener-Defendants had noted their appeal to the U.S. Supreme Court and then filed their jurisdictional statement. *Id*. Then, this Court noted that the *Alabama* case was pending and it

presented issues that could impact the resolution of this case. *Id*. at 2-3. The next event that the Court notes is the Plaintiffs' filing of their Motion to Dismiss or Affirm. *Id*. at 3. These developments allowed the following potential dispositions: (1) summary affirmance; (2) note probable jurisdiction, grant review, and affirm this Court's decision; (3) note probable jurisdiction, grant review, and reverse and remand with instructions; (4) remand for further proceedings in light of its ruling in *Alabama*. *Id*. 3-4. These four potential dispositions risked the General Assembly wasting precious resources "[w]ithout the views and instructions of the Supreme Court." *Id*. at 4. Moreover, because further litigation was likely with whatever the General Assembly enacted by the April 1 deadline, this Court thought it prudent for it and the parties to wait for the views and instructions of the Supreme Court. *Id*.

Now, the Intervener-Defendants have again filed their direct appeal with the Supreme Court. (Ex. A, Dkt. No. 193-2). Both Plaintiffs and Defendants have now filed their Motion to Dismiss or Affirm. (Ex. A to this filing). These filings create the same potential dispositions. (1) summary affirmance; (2) note probable jurisdiction, grant review, and reverse and remand with instructions; or (3) note probable jurisdiction, grant review, and affirm this Court's decision. Whatever plan is produced by the General Assembly will likely require this Court to review it. Both this Court and the General Assembly should benefit from the any further guidance from the Supreme Court. *See* Mem. Op. at 4 (Dkt. No. 137). To compel the General Assembly to act now places the General Assembly in an uncertain and untenable posture. *Id*. Either the General Assembly complies with this Court's September 1 deadline and risk mooting an appeal that seeks to vindicate the constitutionality of the General Assembly's duly enacted map; or miss this Court's deadline and risk that this Court will draw its own remedial map which, depending on the disposition of the Intervener-Defendants' appeal, the Supreme Court could then order the

Commonwealth to return to the original map. This result would truly interfere with orderly elections.

The direct appeal is a changed circumstance meriting an extension of this Court's September 1, 2015 deadline. As was stated in the General Assembly's opening brief:

> To prevent the General Assembly from having [the Supreme Court's] guidance forces the General Assembly to make a Hobbesian choice: wait for the Supreme Court to act but risk waiving the General Assembly's legal right to draw redistricting maps; or comply with this Court's September 1, 2015 deadline but moot the Intervener-Defendant's direct appeal to the Supreme Court. Even if the Intervener-Defendant's challenge is not mooted, the General Assembly's enacted plan or the Court's remedial plan would be done without the benefit of the Supreme Court's guidance and, worse, is "[s]ubject to vacatur or reversal in the Supreme Court."[3]
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> Op. Br. at 8-9 (Dkt. No. 193).

Sixth, Plaintiffs suggest that the General Assembly must 'really' be aiming to seek an extension of time to comply until after the 2016 elections. Pls.'Oppn. Br. at 6 (Dkt. No. 197). This Court should not consider such conjecture. All the General Assembly has requested is an extension of time to comply until November 16, 2015.[4] If the General Assembly seeks an additional extension after November 16, this Court can consider the merits of that request then.[5]

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[3] Defendant-Interveners' Memorandum In Support Of Its Motion To Postpone Remedial Deadline Until September 1, 2015, Dkt No. 125-1, 7.

[4] The Plaintiffs insinuate that it is wrong for the General Assembly to request the holding of the special session after the November 3, 2015 elections. Pls.' Oppn. Br. at 2 n.1 (Dkt. No. 197). The General Assembly is not seeking anything improper. Rather, the General Assembly's request merely reflects a desire to ensure that the Supreme Court has time to consider the constitutionality of its duly enacted plan without potentially mooting the Intervener-Defendants' defense of the General Assembly's duly enacted plan.

[5] The Plaintiffs claim that the Supreme Court's decision in *Alabama Legislative Black Caucus* is "[a]bsolutely fatal" to the Intervener-Defendants' appeal and therefore there is no reason for further delay. Pls.' Oppn. Br. at 6. Plaintiffs misplaced self-assurance is belied by their past erroneous predictions. *See* Pls. Oppn. Br. at 6 (Dkt. No. 134) (stating that Plaintiffs agreed with the Intervener-Defendants that the *Alabama* case was of limited relevance and that the Supreme Court's decision was unlikely to modify existing law); *but see* Dkt. No. 150 (vacating judgment and remanding for consideration in light of *Alabama Legislative Black Caucus*).

Additionally, Plaintiffs forecast that The General Assembly will come to this Court, *a year from now*, claiming that it cannot draw districts in time before the 2016 elections. *Id*. If the Supreme Court has acted or declined to act on the appeal, and the General Assembly is unable to adopt a map by the November 16, 2015 deadline it requests, it is within the power of this Court to implement a remedial map.

The General Assembly is merely requesting a modest extension of time to comply with this Court's June 5th order. The merits of that request is all this Court must adjudicate. In a circumstance where the General Assembly could not implement a map in time for the 2016 elections, there is sufficient time for this Court to devise and implement a remedial districting plan. *See, e.g., Favors v. Cuomo,* No. 11-5632, 2012 U.S. Dist. LEXIS 36910 at *5-6, *14-15, *68 (E.D.N.Y. Mar. 19, 2012*)* (ordering that the magistrate judge to draw a recommended map within two weeks and then ordering New York to fully implement that map within 24 hours so as to be timely for the petitioning process); *League of United Latin American Citizens v. Perry*, 457 F. Supp. 2d 716 (E.D. Tex. 2006) (drawing a court ordered congressional district map in 37 days); *Adamson V. Clayton County Elections & Registration Bd*., 876 F. Supp. 2d 1347 (N.D. Ga. 2012) (drawing a court ordered remedial map in 36 days); *Larios v. Cox*, 314 F. Supp. 2d 1357, 1359, 1363-64 (N.D. Ga. 2012) (drawing a map in approximately three weeks).

III. THE GOVERNOR'S CALL FOR A SPECIAL ELECTION, A DAY AFTER THIS REQUEST WAS FILED, DOES NOT DISPLACE THE GENERAL ASSEMBLY'S PRIMARY JURISDICTION IN ENACTING A MAP.

Defendants claim that Governor McAuliffe's call for a special session of the General Assembly, conveniently a day after the General Assembly filed its request to extend the deadline to comply with this Court's order, moots the General Assembly's motion. Defs.' Oppn. Br. at 6, 10 (Dkt. No. 199). Plaintiffs claim that the provisions of the Virginia Constitution vest the power

to call a special session in the Governor. Pls.' Oppn. Br. at 5 (Dkt. No. 197). Plaintiffs also correctly acknowledge, however, that the Virginia Constitution also vests power in the General Assembly to call a special session upon application of two-thirds of the members elected to each house. *Id*. at 5 n.3 (quoting Va. Const. art. IV, § 6). Governor McAuliffe has called for a special session to be held on August 17, two weeks prior to the September 1 deadline. (Dkt. No. 197-1 at 3).

But none of this displaces what the U.S. Supreme Court recognizes as the sovereign right of a legislature to draw and enact redistricting maps. *See, e.g., Perry v. Perez*, 132 S. Ct. 934, 940-41 (2012) ("Redistricting is primarily the duty and responsibility of the State...The failure of a State's newly enacted plan to gain preclearance prior to an upcoming election does not, by itself, require a court to take up the *state legislature's task*.") (emphasis added) (internal quotation marks and citations omitted); *Growe*, 507 U.S. at 34 ("We say once again what has been said on many occasions: reapportionment is primarily the duty and responsibility of the State *through its legislature* or other body, rather than of a federal court.") (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)). This Court too has recognized that the General Assembly has primary jurisdiction in the drawing of redistricting maps. *See Page v. Va. State Bd. of Elections*, No. 13-678, 2015 U.S. Dist. LEXIS 73514 at *59 (E.D. Va. June 5, 2015) ("That the matter of providing a redistricting plan to remedy the constitutional violations found in this case is referred to the **Virginia General Assembly** for exercise of its primary jurisdiction.") (emphasis added). The Governor's call for a special session does not displace the General Assembly's jurisdiction and sovereign right to enact a redistricting map. The Governor may have exercised his power to call a session of the General Assembly, but it is the General Assembly, not the Governor, that has the power to pass a redistricting plan.

It is therefore improper for Plaintiffs and Defendants to suggest that because the Governor has called a special session, the General Assembly must enact a map and potentially moot the Intervener-Defendants' direct appeal seeking to vindicate the constitutionality of the General Assembly's duly enacted plan. Instead, the General Assembly requests that this Court grant the extension giving the General Assembly until November 16, 2015 to comply with this Court's June 5th order.

IV. THE REQUESTED EXTENSION OF NOVEMBER 16, 2015 DOES NOT IMPOSE AN UNDUE BURDEN ON THIS COURT TO DEVELOP A REMEDIAL PLAN.

The Defendants contend that granting the General Assembly's requested extension would "[g]realty compress the time available to the Court to fashion its own plan if the legislature and Governor fail to reach an agreement." Defs.' Oppn. Br. at 8 (Dkt. No. 199). According to the Defendants, the congressional districts must be in place before January 1 so that candidates can begin collecting signatures. *Id*. According to Defendants, this is especially important for non-incumbent candidates and independent candidates. *Id*. at 8-9.

This same argument was made—and rejected previously by this Court. Defs.' Oppn. Br. at 13-14 (Dkt. No. 133). As this Court previously stated rejecting this argument

> [W]e find unpersuasive the contention that a September 1 deadline would be too late because the new plan should be in effect by January 1, 2016, the day after which candidates may start collecting signatures. That argument ignores the fact that the plan that was found constitutionally wanting was not adopted by January 1, 2012 and yet elections were held without a hitch. In any event, if the redistricting plan submitted under the modified deadline is not acceptable, the Court can craft a plan in sufficient time to allow elections to proceed in 2016.
>
> Dkt. No. 137 at 5.[6]

[6] The one new argument the Defendants' present here is that just because the 2012 elections were held without a hitch does not mean that "[t]he delay in the plan's adoption did not asymmetrically burden congressional challengers." Defs. Oppn. Br. at 9 n. 22 (Dkt. No. 199). If true, the Defendants do not adduce any evidence to support this assertion.

Furthermore, that very same plan that this Court found constitutionally wanting was not enacted until January 25, 2012 and did not preclear the Justice Department until March 14, 2012. *See* Va. Code. § 24.2-302.2. Nor do the Defendants address the fact that, as noted, *supra*, Courts have ordered the implementation of remedial maps for congressional districts in as few as 24 hours and on numerous occasions within a matter of weeks. Granting the extension will provide the Court sufficient time draw a map should the General Assembly and the Governor not come to an agreement in time to meet the requested November 16, 2015 deadline.

V. COMPELLING THE GENERAL ASSEMBLY TO ADHERE TO THE SEPTEMBER 1, 2015 DEADLINE RISKS ADDITIONAL COSTS FOR A SPECIAL SESSION SHOULD THE SUPREME COURT OVERRULE THIS COURT'S RULING.

Both Plaintiffs and Defendants misunderstood the General Assembly's concerns about cost. Pls.' Oppn. Br. at 4 n. 2 (Dkt. No. 197); Defs.' Oppn. Br. at 11 (Dkt. No. 199). The General Assembly's argument was that this Court should grant the extension so that the General Assembly would convene in a special session "[o]nly after the benefit of the Supreme Court's input whether to note probable jurisdiction, affirm the two-judge majority's ruling, or remand for further considerations consistent with the Court's opinion." *See* Op. Br. at 10 (Dkt. No. 193). To require compliance with this Court's September 1 deadline risks multiple special sessions depending on how the Supreme Court disposes of the Intervener-Defendants' appeal. *Id*. Rather than burden the taxpayers of Virginia potentially twice, an outcome the Plaintiffs seem to agree is a detrimental to the taxpayers, Pls. Br. at 5 (Dkt. No. 197), this Court should grant the extension and permit the General Assembly to benefit from any potential guidance that the Supreme Court may provide. *Id*.

VI. NEITHER THE PLAINTIFFS NOR THE DEFENDANTS IDENTIFIED ANY PREJUDICE TO THEM SHOULD THIS COURT GRANT THE GENERAL ASSEMBLY'S MODEST EXTENSION REQUEST.

While it is onerous for the General Assembly to comply with the September 1 deadline, both because compliance would potentially moot the Intervener-Defendants' direct appeal and for the rest of the reasons outlined above, neither the Plaintiffs nor the Defendants identified any prejudice to them if this Court granted the modest extension of time. As discussed previously, there is no prejudice to the Plaintiffs or the Defendants for the reasons outlined in the General Assembly's opening brief. *See* Op. Br. at 11-12 (Dkt. No. 193).

Finally, Plaintiffs claim that this is the second request to extend the deadline for compliance with this Court's order as this Court already extended the previous April 1 deadline to September 1. Pls. Oppn. Br. at 3, 5 (Dkt. No. 197). This is inaccurate. The April 1 deadline was vacated by the Supreme Court's order on April 1, 2015. (Dkt. No. 150) (vacating judgment and remanding for consideration under *Alabama Legislative Black Caucus*). Then this Court found for Plaintiffs and ordered that the General Assembly comply by September 1, 2015. (Dkt. No. 171) This is therefore the first extension request related to the June 5, 2015 order of this Court.

CONCLUSION

In the end, all the General Assembly is requesting is a modest extension of time to comply with this Court's June 5th order, extending the deadline from September 1 to November 16, 2015. The General Assembly takes its obligation seriously and wants to ensure that it properly executes its sovereign duty. The extension will provide the time necessary to see whether the Supreme Court provides any additional guidance concerning the constitutionality of the General Assembly's duly enacted plan.

Respectfully submitted this 31st day in July, 2015,

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2015, I electronically filed the REPLY MEMORANDUM IN SUPPORT OF INTERESTED PARTIES' VIRGINIA HOUSE OF DELEGATES' AND VIRGINIA SENATE'S MOTION FOR AN EXTENSION OF TIME TO COMPLY WITH THIS COURT'S JUNE 5, 2015 ORDER, and all attachments, with the Clerk of Court for the United States District Court for the Eastern District of Virginia by using the CM/ECF system, which will send notifications to the following ECF participants:

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No. 14-1504

Title:	Robert J. Wittman, et al., Appellants v. Gloria Personhuballah, et al.
Docketed:	June 22, 2015
Lower Ct:	United States District Court for the Eastern District of Virginia
Case Nos.:	(3:13cv678)
Decision Date:	June 5, 2015

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Jun 22 2015	Statement as to jurisdiction filed. (Response due July 22, 2015)
Jul 22 2015	Motion to dismiss or affirm filed by appellees Gloria Personhuballah, and James Farkas.
Jul 22 2015	Motion to affirm filed by appellees Virginia State Board of Elections.

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