STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
No. 19 CVS 012667

REBECCA HARPER, *et al.*,

Plaintiffs,

v.

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

Defendants.

REPLY IN SUPPORT OF PLAINTIFFS' MOTION TO STRIKE INTERVENOR-APPLICANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AS UNTIMELY AND PREJUDICIAL

Rather than acknowledge that they missed the court-ordered deadline to respond to Plaintiffs' motion for a preliminary injunction, Intervenor-Applicants cite a provision of the Eastern District of North Carolina Local Rules that clearly does not apply. The rule, EDNC Local Rule 5.3(c)(2), applies where a motion is pending at the time of removal "for which no supporting memorandum of law has been submitted to the state court." But Plaintiffs' September 30 motion for preliminary injunction, which was pending before this Court at the time of the removal, obviously included a memorandum of law. No one could have believed otherwise. Plaintiffs submitted a 50-page legal brief on September 30 comprehensively addressing all of the relevant facts and law, with a table of contents and table of authorities cataloguing the extensive legal authorities cited in the brief, along with expert analysis and hundreds of pages of other exhibits. The notion that Intervenor-Applicants believed a further, additional memorandum of law was forthcoming is farcical.

Because Plaintiffs' September 30 brief included a memorandum of law, the applicable federal local rule was EDNC Local Rule 5.3(c)(3), which provides:

> If, at the time of removal, a pending motion was supported by a memorandum of law, any response to that motion shall be filed 21 days after the removal, ***unless otherwise ordered by the court***.

EDNC Local Civil Rule 5.3(c)(3) (emphasis added). And here, "the court" in an October 10 order had "otherwise ordered" a specific deadline of 5:00 p.m. on October 21, 2019, for Intervenor-Applicants to respond to the preliminary injunction motion. Pursuant to 28 U.S.C. § 1450, "[u]pon removal, the orders entered by the state court are treated as though they had been entered by the federal court." *Slate v. Byrd*, 2013 WL 2147618, at *2 (M.D.N.C. May 16, 2013) (internal quotation marks omitted).

In fact, even if EDNC Local Rule 5.3(c)(2) did apply as Intervenor-Applicants claim, their response still would be untimely. That provision cross-references EDNC Local Rule 7.1(f) regarding the time to respond to a motion, and Rule 7.1(f) also prescribes a timeframe to respond "unless otherwise ordered by the court."

The bottom line is that this Court ordered Intervenor-Applicants to respond to Plaintiffs' preliminary injunction motion by a date-and-time-certain, that order remained in effect upon removal pursuant to 28 U.S.C. § 1450, and no federal local rule did (or could) alter the application of this federal statute to this Court's scheduling order. Legislative Defendants and State Defendants both understood this, as they filed their response briefs by the court-ordered deadline on October 21. Intervenor-Applicants' response brief was untimely and highly prejudicial, and should be stricken.

Respectfully submitted this the 23nd day of October, 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 23nd day of October, 2019.

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