IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DEMOCRACY NORTH CAROLINA, THE LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, DONNA PERMAR, JOHN P. CLARK, MARGARET B. CATES, LELIA BENTLEY, REGINA WHITNEY EDWARDS, ROBERT K. PRIDDY II, WALTER HUTCHINS, AND SUSAN SCHAFFER,

Plaintiffs,

vs.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS; DAMON CIRCOSTA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; STELLA ANDERSON, in her official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; KEN RAYMOND, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; DAVID C. BLACK, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, in her official capacity as EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS; THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; J. ERIC BOYETTE, in his official capacity as TRANSPORTATION SECRETARY; THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; MANDY COHEN, in her official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES,

Defendants.

Civil Action No. 20-cv-457

PLAINTIFF'S OPPOSITION TO INTERVENOR-DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' JULY 2ND DECLARATIONS

PHILIP E. BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; and TIMOTHY K. MOORE, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES,

Legislative Defendant-Intervenors.

PLAINTIFFS' OPPOSITION TO INTERVENOR-DEFENDANTS' MOTION TO STRIKE PLAINTIFFS' JULY 2ND DECLARATIONS

INTRODUCTION

When Intervenor-Defendants first sought to intervene in this action, Plaintiffs expressed concern that their admission would result in undue delay. Doc. 24 at 18 & 18 n.1. Those concerns have now come to fruition. Intervenor-Defendants waited for ten days after they were granted intervention before moving to take depositions of Plaintiffs' witnesses, even though the declarations of these witnesses were filed nearly a week before they moved to intervene. Now apparently of the view that "time is of the essence," Doc. 78 at 2, Intervenor-Defendants mischaracterize reply declarations submitted with Plaintiffs' preliminary injunction reply brief in order to delay a hearing on the motion, making it more difficult for Defendants to implement any relief this Court may see fit to grant in time for the

General Election and forcing any subsequent appeals to take place in the weeks before Election Day. And despite having time to draft a motion to strike the reply declarations and a 20-page brief in support, Intervenor-Defendants now complain that they have had insufficient time—a full week—to prepare responses to Plaintiffs' reply declarations, filed on July 2, for the July 9 hearing. Doc. 78 at 2. They do not explain why this time is insufficient, even though, by their own admission, they have had time to conduct a "close examination of Plaintiffs' reply declarations." *Id.* at 7.

In moving to join this case, Intervenor-Defendants, like all proposed intervenors, tacitly agreed to abide by the timeline anticipated by the parties and Court. They cannot now protest that it moves too quickly. The Court should accordingly deny the Motion to Strike Plaintiffs' July 2nd Declarations.

FACTUAL BACKGROUND

Plaintiffs filed a motion for preliminary injunction on June 5, 2020, which they supported with several declarations. On June 26, Intervenor-Defendants filed their brief in opposition, which challenged, *inter alia*, Plaintiffs' standing, this Court's jurisdiction, and the merits of

Plaintiffs' claims. On July 2, Plaintiffs filed a reply, accompanied by nine reply declarations responding to Defendants' and Intervenor-Defendants' arguments in opposition to a preliminary injunction. Seven of the reply declarations were by individuals who had provided declarations attached to Plaintiffs' opening brief, while two others were offered to rebut arguments raised by Intervenor-Defendants in their opposition brief. Four days later, Intervenor-Defendants filed a motion to strike the reply declarations pursuant to Federal Rule of Civil Procedure 6(c)(2), claiming that they introduced new evidence that should have been included with Plaintiffs' opening brief. They seek one of two remedies: that Plaintiffs refile their reply without the reply declarations by July 7, or in the alternative, that the Court grant Intervenor-Defendants leave to depose declarants between July 6 and July 17, permit them to file a surreply by July 21, and reschedule the preliminary injunction hearing for July 23. Doc. 77 at 1.

ARGUMENT

I. Plaintiffs' reply declarations are proper under Federal Rule of Civil Procedure 6(c)(2).

Federal Rule of Civil Procedure 6(c)(2) provides in relevant part: "Any affidavit supporting a motion must be

served with the motion." The purpose of Rule 6(c)(2) is "to prevent unfair surprise by eleventh hour filings." *Masters v. Lin*, No. 6:14-2473-TMC, 2015 WL 12830505, at *6 (D.S.C. Jan. 23, 2015) (quoting *McGinnis v. Se. Anesthesia Assocs., P.A.*, 161 F.R.D. 41, 42 (W.D.N.C. 1995)). "That is, a party may not file a motion unsupported by any evidence only to spring the evidence on the opposing party on a later date." *Id.* However, "[Rule 6(c)(2)] does not preclude affidavits supporting a reply brief when they respond to evidence supporting an opposition brief." *Robinson v. Empire Equity Grp., Inc.*, No. WDQ-09-1603, 2009 WL 4018560, at *2 (D. Md. Nov. 18, 2009) (quoting *Kaiser-Flores v. Lowe's Home Ctrs., Inc.*, No. 5:08-CV45-V, 2009 WL 762198, at *8 (W.D.N.C. Mar. 19, 2009)); *Aldridge v. Marion Cty. Coal Co.*, No. 1:17CV79, 2017 WL 3446530, at *5 (N.D. W. Va. Aug. 10, 2017).

Here, there is no risk of "unfair surprise." To begin, Plaintiffs have not filed the reply declarations at the eleventh hour. From the date of filing to the date of the hearing, Intervenor-Defendants will have had seven days to prepare their responses. More importantly, Plaintiffs amply supported their opening brief with declarations, and the reply declarations respond directly—and solely—to arguments

raised in Defendants' and Intervenor-Defendants' opposition briefs. To this end, they were introduced to support Plaintiffs' *reply* in support of their preliminary injunction motion, not the original brief—as Rule 6(c)(2) permits.

- **Myers Declaration:** In their opposition brief, Defendants said that Plaintiffs' argument regarding the inadequacy of multi-partisan assistant teams (MATs) was speculative in light of HB 1169's changes. Doc 58-1 at 23. Intervenor-Defendants argued that MAT Teams could assist Plaintiff Hutchins. Doc. 51 at 53-54. The Myers Declaration responds directly to these arguments, explaining that guidelines have always existed regarding MAT Teams and yet counties still have not followed them. It was not attached to Plaintiffs' opening brief because it responds directly to arguments made by Defendants and Intervenor-Defendants in their opposition briefs.
- **Quinn Declaration:** The Quinn Declaration responds directly to declarations filed by Defendants and Intervenor-Defendants. *See* Devore Decl. ¶ 8, Hawkins Decl. ¶ 5, Weatherly Decl. ¶ 3; Bell Decl. ¶ 34. It specifically rebuts those declarants' assertions about

the efficacy of the uniform hours requirement (specifically as to voter confusion). Quinn Decl. ¶ 9.

- **Lopez Reply Declaration:** This declaration responds directly to Intervenor-Defendants' contention that DemNC does not have standing. *See* Doc. 51 at 6. Additionally, Defendant Brinson Bell asserts that the state is creating a standardized cure process, Brinson Bell Decl. ¶ 17, to which Lopez responds in the reply declaration. *See* Lopez Reply Decl. ¶ 3. Defendant Brinson Bell also explains in her declaration that she issued a numbered memo regarding the uniform hours requirement, Brinson Bell Decl. ¶ 34, but the Lopez Reply Declaration provides insight into why this guidance will not matter. Lopez Reply Decl. ¶ 4.
- **Nicholas Reply Declaration:** This declaration rebuts Intervenor-Defendants' argument that LWVNC will not be able to show its core missions have been frustrated. *See* Doc. 51, at 5–6. If, as they contend, the Court found during the July 6 hearing that it merely emphasized the same points as the initial declaration, then the Court's consideration of the declaration without a rebuttal from

Intervenor-Defendants would not prejudice Intervenor-Defendants.

- **Bentley Reply Declaration:** Plaintiff Bentley's reply declaration responds directly to attacks on her standing by Intervenor-Defendants. To provide context and relieve the Court of the need to refer back to her original declaration, paragraphs 1-3 reiterate information provided in her original declaration. Paragraphs 4-6 rebut Intervenor-Defendants' proposal that she ask an asymptomatic neighbor, out-of-state family member, or stranger to witness her ballot. Doc. 51 at 7–8. As for paragraphs 7-10, Plaintiffs concede that these portions, while not new evidence, were a perhaps clumsy attempt to anticipate arguments about the use of remote technology, in response to Defendants' discussion about satisfying the witness requirement by passing a ballot to a witness under a door or window, *see* Doc. 58 at 27, and an attempt to further refute to Intervenor-Defendants' challenge to her standing. Similar arguments about remote technology were proposed by the Wisconsin Elections Commission in a

challenge to that state's witness requirement.[1] Paragraphs 7-10 clarify that these approaches are unavailable to her or would still potentially expose Plaintiff Bentley to the novel coronavirus. Plaintiffs sincerely apologize to the Court for the confusion created by these portions of Plaintiff Bentley's reply declaration. To the extent that the Court believes paragraphs 7-10 offer new evidence that should have been included in Plaintiff Bentley's initial declaration, Plaintiffs respectfully request that the Court strike these four paragraphs while preserving the balance as responsive to Intervenor-Defendants' opposition brief and in support of Plaintiffs' reply brief.

- **Gronke Reply Declaration:** Gronke's reply declaration responds to the Callahan and Block Declarations, as well as arguments raised by Defendants. Specifically, Defendants argue: "The plaintiffs have not provided information sufficient to understand the nature of the burdens to voters resulting from the confluence of the COVID-19 pandemic and uniform one-stop hours." Doc. 58

[1] *See* Meagan Wolfe, Absentee Witness Signature Requirement Guidance, Wis. Elections Comm'n (Mar. 29, 2019), https://elections.wi.gov/sites/elections.wi.gov/files/2020-03/Absentee%20Witness%20Guidance.pdf.

at 31. Gronke's reply declaration further illuminates this confluence between COVID-19 and the uniform hours requirement by opining about how a panoply of polling place requirements can lead to precinct consolidation, which affects voter turnout. Gronke Reply Decl. ¶¶ 12-13, 24. Defendants assert that Plaintiffs' argument about the Home County Provision is moot, Doc. 58 at 32, which Gronke's reply declaration specifically rebuts by explaining how the Home County provision has exacerbated issues in other states, particularly Georgia, and by addressing issues with poll worker shortages in other states using some reports that were published after the Second Amended Complaint was filed. Gronke Reply Decl. ¶¶ 8, 11. Finally, in her declaration, Defendant Brinson Bell asserts that the state is creating a standardized cure process, and makes statements regarding the uniform hours requirement and drop boxes. Gronke responds by offering his expert opinion on what requirements must be present for the state's "standardized cure process," and on the importance of drop boxes and elimination of the uniform hours requirement. Gronke Reply Decl. ¶¶ 14-24, 29-30, 32-33.

- **Bartlett Reply Declaration:** This reply declaration is also offered in response to specific arguments raised by Defendants and Intervenor-Defendants. *See* Bartlett Reply Decl. ¶ 3. Paragraph 4 responds to a new issue raised by Defendant Brinson Bell—that she was denied emergency rule, causing her emergency rule to expire on June 12—and opines that this denial impeded her "ability to exercise her powers as needed to take remedial action enduring the pandemic." This paragraph directly rebuts assertions made by Defendants and Intervenor-Defendants that actions taken by the State Board of Elections have negated the need for Plaintiffs' requested relief. *See* Doc. 58 at 10. Paragraphs 5-9 respond to Bell, Devore, and Hawkins' concerns about extending the 25-day registration deadline. Although Bartlett did discuss extending the deadline in his first declaration, he did not have occasion to respond to Defendants' proffered interests in not extending the deadline during the pandemic and the risk of "double registration." Paragraphs 10-11 discuss MATs and directly rebut Intervenor-Defendants' assertions that HB 1169's changes to MATs will relieve the burden on voters

such as Plaintiff Hutchins. *See, e.g.*, Doc. 51 at 9. Paragraphs 12-15 respond to the timeline set forth by Defendant Brinson Bell for printing absentee ballots and envelopes, and address the assertion that relief after this timeline would require re-printing. *See* Brinson Bell Decl. ¶¶ 18-19. Paragraphs 16-17 respond to Bell, Devore, and Hawkins' assertions about purported state interests in failing to provide drop boxes. Although he did address these in his first declaration, Bartlett Decl. ¶ 25, this was before Defendants and Intervenor-Defendants asserted interests in failing to provide drop boxes. Paragraph 18 responds to Intervenor-Defendants' assertion that providing voters a method for submitting an absentee ballot request by phone would impede the state's interest in "maintaining written and electronic records" of these requests. *See* Doc. 51 at 24. Paragraph 19 responds to Intervenor-Defendants' assertion that a uniform cure process would advantage absentee voters over in-person voters. Doc. 51 at 35. Finally, paragraph 20 rebuts the concerns about FWABs raised in Defendant Brinson Bell's declaration, and paragraphs 21-22 rebut

concerns about lifting the uniform hours restriction expressed by Devore, Hawkins, and Weatherly.

- **Dr. Murray Reply Declaration** Intervenor-Defendants concede, as they must, that Dr. Murray's reply declaration "for the most part responds to the declaration of Dr. Plush." In fact, Dr. Murray's declaration is directly responsive to Dr. Plush's and Mr. Schauder's declarations. Defendants' experts argue that in-person voting can be made safe and that there was no post-election Covid-19 transmission after the April 7 election in Wisconsin. In paragraphs 1-5 and 9-16 of her reply declaration, Dr. Murray discusses airborne transmission to rebut Dr. Plush, and to explain why the intervention measures Dr. Plush and Mr. Schauder describe are insufficient to mitigate the danger to voters. Paragraphs 20-24 respond to Dr. Plush's assertion that "there is no direct, undisputed fact that a voter became infected during the [in-person] voting process" in state primaries held this spring. Plush Decl. ¶ 16; *see* Murray Reply Decl. ¶ 24 ("In summary, despite labor-intensive and costly efforts to maintain the safety of in-person voting during the Wisconsin election, a

rigorous study provides support for the contention that this election increased Covid-19 transmission."). The balance of the reply declaration is also responsive to Dr. Plush and Mr. Schauder's arguments and draw on developments subsequent to the filing of Plaintiffs' preliminary injunction, for instance the nationwide Black Lives Matter protests.

- **Ketchie Reply Declaration:** This reply declaration supports Plaintiffs' reply brief by providing figures used by Plaintiffs to refute Defendants' and Intervenor-Defendants' arguments. For example, paragraph 7 rebuts Defendants' assertion that a 15 percent rejection rate does not indicate problem that can be remedied with a cure process. Doc. 58 at 35.

Although these reply declarations do not violate Rule 6(c)(2), on July 6, Plaintiffs nonetheless offered Intervenor-Defendants the opportunity to depose declarants Bartlett and Murray on July 8 and July 9—with two hours allotted for each deponent—and to make Plaintiff Bentley available for written deposition pursuant to Rule 31. In response, Intervenor-Defendants accepted Plaintiffs' offer regarding Plaintiff Bentley but demanded four hours each with

declarants Bartlett, Murray, Myers, Quinn, Gronke, and Ketchie, for a total of 24 hours of testimony. They also insisted on rescheduling the preliminary injunction hearing for the week of July 20. This inflexibility is unreasonable and reflects their interest in delaying the proceedings.

In support of their motion, Intervenor-Defendants cite an out-of-circuit case, *Semper/Exeter Paper Co. LLC v. Henderson Specialty Paper LLC*, 2009 WL 10670619 (C.D. Cal. Sept. 21, 2009), for the proposition that declarations submitted with a reply brief should be stricken if the facts contained in the reply declarations were previously available and the declarations respond to arguments that were not unanticipated. *Id.* at *2. There, the plaintiffs moved for a preliminary injunction with the support of one declaration. In response, defendants filed evidentiary objections regarding the admissibility of the evidence. *Id.* In their reply, plaintiffs filed two declarations from *new* declarants and one reply declaration from the original declarant to support admissibility. *Id.* The court found that there was no justification for not including these declarations earlier. *Id.* at *3. They also filed a third new declaration that the

judge allowed because it concerned analysis of evidence that was not previously available. *Id.*

That case is distinguishable from the issues presented here. In *Semper/Exeter*, the court was concerned that if, as defendants claimed, the evidence submitted with the opening brief was inadmissible, the plaintiffs should not be able to submit new and different evidence to replace it. According to the court, "[a] system that tolerated this would invite endless rounds of new evidentiary submissions and new attacks on those submissions." 2009 WL 10670619, at *3. The court decided that the issues raised in the new declarations were not unanticipated because they were responding to the admissibility of the evidence in the original declarations. *Id.* at *2. "It was foreseeable to Plaintiff that Defendants would attack the admissibility of Plaintiff's evidence." *Id.* at *3. The court specifically contrasted this issue with, for example, a statute of limitations defense, which would be appropriate to rebut with evidence in reply. *Id.* at *2. Here, Intervenor-Defendants try to apply the *Semper/Exeter* court's reasoning to their legal arguments on standing, the political question doctrine, the merits of Plaintiffs' claims, and *Purcell*. But Plaintiffs could not

have anticipated these arguments the way parties can anticipate evidentiary issues, notice of which is provided by the Federal Rules of Evidence. What is more, at the time that Plaintiffs filed the Motion for Preliminary Injunction on June 5, they could not have foreseen that Intervenor-Defendants would move to intervene in the case on June 10 and be granted intervention on June 15. It would be unreasonable to expect litigants to address in their opening briefs any and all *potential* counterarguments that *could* be raised in opposition briefs, filed by existing parties *and* future parties that have not yet moved to intervene. But that is precisely the implication of Intervenor-Defendants' arguments here.

Even assuming that Plaintiffs' reply declarations provide new evidence, courts in this Circuit have allowed new evidence, provided that the opposing party has adequate time to respond. In one case, this Court decided to admit new evidence submitted two days prior to the scheduled hearing, finding that this was sufficient time for the party moving to strike the evidence, to review and prepare to respond to it. *Superior Performers, Inc. v. Meaike*, No. 1:13CV1149, 2014 WL 1412434, at *3 (M.D.N.C. Apr. 11, 2014) (Beaty, J.); *see also*

id. ("The Court set the preliminary injunction hearing date shortly after issuing the TRO, and Plaintiff submitted its Reply [Doc. 57] and all of the affidavits at least two days before the hearing … which allowed the Court and defense counsel at least some time to review all the arguments and evidence prior to the hearing. Therefore, the Court will exercise its discretion and consider all of Plaintiff's evidence, despite the untimely filings."). In contrast, courts have refused to consider evidence where the other side was given no opportunity to respond. *Cf. Orsi v. Kirkwood*, 999 F.2d 86 (4th Cir. 1993) (upholding district court's refusal to hear evidence offered for the first time *on the morning of a hearing* on the motion for summary judgment); *Lin*, 2015 WL 12830505 (striking evidence offered for the first time during a hearing on a motion for removal). Thus, to the extent that this Court deems any of Plaintiffs' reply declarations to contain new evidence, it should deny Intervenor-Defendants' motion to strike, as they will have had adequate time—seven days—to prepare a response to such evidence.

II. Intervenor-Defendants' alternative requested relief should be denied because it will cause delay and prejudice the original parties.

The Court should also deny Intervenor-Defendants' alternative requested relief. Intervenor-Defendants ask that, should the Court deny their motion to strike Plaintiffs' reply declarations, it nonetheless grant them leave to take depositions through July 17 and to file a surreply on July 21; and reschedule the preliminary injunction hearing for July 23 or 24. Doc. 77 at 1; Doc. 78 at 16. Such measures are not only unnecessary and unwarranted—they appear designed entirely to cause delay.

First, if Intervenor-Defendants require only four days to synthesize whatever supplemental information they may glean from the proposed depositions into a surreply brief, then surely seven days is sufficient time to develop responses to the original declarations—which were filed more than a month ago—and the reply declarations.

Second, Intervenor-Defendants have not offered any satisfactory reason as to why they need to conduct depositions. Intervenor-Defendants have been on notice as to Plaintiffs' claims and arguments in support of their motion for preliminary injunction, including declarations submitted with that motion, since before they moved to intervene. As discussed above, Plaintiffs' reply declarations do not raise

any new issues, and even if they did, Intervenor-Defendants have already represented to the Court that they have conducted a "close examination" of these declarations. Doc. 78 at 8. As of the July 9 hearing, they will have had a full week to prepare their responses to them. *Cf. Superior Performers, Inc.*, 2014 WL 1412434, a *3 (two days offered sufficient time to respond to newly introduced evidence). Nor have they indicated why cross-examination would be an insufficient method for obtaining the information they seek to learn through their proposed depositions. At best, this latest request is duplicative of their pending motion for leave to take depositions. If Intervenor-Defendants were not prepared to participate on equal footing with Defendants—who have not expressed a need for depositions or more time—or to proceed with the parties' agreed-upon timeline, they should not have sought to intervene.

Third, granting Intervenor-Defendants a surreply would cost the Court and parties additional time and create the very "endless rounds" of filings that the *Semper/Exeter* court sought to prevent. *Semper/Exeter Paper Co.*, 2009 WL 10670619, at *3. Here, Intervenor-Defendants have not only demanded entry into this case, but now request special treatment not

usually afforded to ordinary litigants. They believe they are entitled to make uncontested arguments and allegations in their opposition brief, and ask the Court to shield them from rebuttal evidence proffered by Plaintiffs in response to those arguments; failing that, they demand extra time and the last word on the matter. In this way, their disagreement is with the Federal Rules of Civil Procedure, not Plaintiffs' reply declarations.

Finally, Intervenor-Defendants' motion to strike appears purely dilatory. They themselves acknowledge that "time is of the essence" in this case. Doc. 78 at 2. They attempt to blame Plaintiffs for this truncated timeline by alleging that Plaintiffs filed this action too late, while simultaneously implying that Plaintiffs brought their claims too early by attempting to "cut short [the General Assembly's] legislative process." Doc. 17 at 5. And as demonstrated through their extensive discussion of *Purcell v. Gonzalez* in their opposition brief, Intervenor-Defendants are acutely aware that Plaintiffs require expeditious resolution of their case and all appeals to obtain the broadest possible relief with the greatest opportunity for voters to benefit—and Intervenor-Defendants are attempting to delay that resolution

Intervenor-Defendants request that the preliminary injunction hearing be postponed another two weeks, so that the parties must litigate the Court's ruling on Plaintiffs' motion for preliminary injunction in the three months before Election Day. Such a request is unfounded and unduly prejudices the original parties' rights, *cf.* Federal Rule of Civil Procedure 24(b)(3), and should be denied.

CONCLUSION

For the foregoing reasons, Intervenor-Defendants' Motion to Strike Plaintiffs' July 2nd Declarations should be denied in its entirety.

Date: July 7, 2020 Respectfully submitted,

/s/ Jon Sherman
Jon Sherman*
D.C. Bar No. 998271
Michelle Kanter Cohen*
D.C. Bar No. 989164
Cecilia Aguilera*
D.C. Bar No. 1617884
FAIR ELECTIONS CENTER
1825 K St. NW, Ste. 450
Washington, D.C. 20006
Telephone: (202) 331-0114
Email:
jsherman@fairelectionscenter.org
mkantercohen@fairelectionscenter.org
caguilera@fairelectionscenter.org

/s/ Allison Riggs
Allison J. Riggs (State Bar #40028)
Jeffrey Loperfido (State Bar #52939)
Hilary Klein (State Bar #53711)
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380
Facsimile: 919-323-3942
Email:
Allison@southerncoalition.org
jeff@southerncoalition.org
hilaryhklein@scsj.org

/s/ George P. Varghese
George P. Varghese (Pa. Bar No. 94329) Joseph J. Yu (NY Bar No. 4765392)
Stephanie Lin (MA Bar No. 690909)
Rebecca Lee (DC Bar No. 229651)
Richard A. Ingram (DC Bar No. 1657532)
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000
Email:
george.varghese@wilmerhale.com
joseph.yu@wilmerhale.com
stephanie.lin@wilmerhale.com

rebecca.lee@wilmerhale.com
rick.ingram@wilmerhale.com

WORD CERTIFICATION

Pursuant to Local Rule 7.3(d)(1), the undersigned certifies that the word count for Plaintiffs' Opposition to Intervenor-Defendants' Motion to Strike Plaintiffs' July 2nd Declarations is 3636. The word count excludes the case caption, signature lines, cover page, and required certificates of counsel. In making this certification, the undersigned has relied upon the word count of Microsoft Word, which was used to prepare the brief.

/s/ George P. Varghese
George P. Varghese