

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO. 5: 11-cv-00472-FL

NORTH CAROLINA RIGHT TO LIFE )  
POLITICAL ACTION COMMITTEE and )  
NORTH CAROLINA RIGHT TO LIFE )  
COMMITTEE FUND FOR INDEPENDENT )  
EXPENDITURES, )

Plaintiffs, )

v. )

LARRY LEAKE, in his official capacity as )  
Chairman of the North Carolina State Board )  
of Elections, CHARLES WINFREE, in his )  
official capacity as a member of the North )  
Carolina State Board of Elections, ANITA S. )  
EARLS, in her official capacity as a member of )  
the North Carolina State Board of Elections, )  
BILL W. PEASLEE, in his official capacity as )  
a member of the North Carolina State Board of )  
Elections, ROBERT CORDLE, in his official )  
capacity as a member of the North Carolina )  
State Board of Elections, J. DOUGLAS )  
HENDERSON, in his official capacity as the )  
Guilford County District Attorney, and ROY )  
COOPER, in his official capacity as the )  
Attorney General of North Carolina, )

Defendants. )

**SECOND MOTION TO EXTEND TIME**  
**TO ANSWER OR OTHERWISE**  
**RESPOND**

Fed. R. Civ. Proc. 6; Local Civil Rule 6.1

NOW COME defendants, by and through undersigned counsel, and move pursuant to Rule 6.1 of the Local Civil Rules for an extension of time to answer or otherwise respond to the complaint in this matter. In support of this motion, defendants show the following good cause:

1. Defendants have requested and received one sixty-day extension up to and including November 14, 2011, for answering or responding to the Complaint.

2. North Carolina adopted a public financing program for appellate judicial races that provides for “matching funds” under certain circumstances, and special reporting is required in order to implement the matching funds provisions. See N.C. Gen. Stat. §§ 163-278.66(a) and -278.67. The matching funds provision of North Carolina’s appellate judicial races was upheld by the United States Court of Appeals for the Fourth Circuit in *North Carolina Right to Life Comm. Fund for Indep. Political Expenditures v. Leake*, 524 F.3d 427 (4th Cir.), cert. denied sub nom. *Duke v. Leake*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 490, 172 L.Ed.2d 357 (2008). Matching funds have also been a component of other statutory public funding programs such as one in the Town of Chapel Hill which is supervised by the State Board of Elections. The United States Supreme Court on June 27, 2011, issued an opinion in *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 131 S.Ct. 2806 (2011), in which the Court found an Arizona matching fund provision to be violative of the First Amendment.

3. Plaintiffs filed this suit on September 9, 2011, challenging the application of N.C. Gen. Stat. § 163-278.67, the matching fund provision of public financing of appellate judicial elections in North Carolina, and N.C. Gen. Stat. § 163-278.66(a), which contains a reporting provision intended to implement the matching fund provision. The next appellate judicial elections will be held in 2012, with the primary scheduled for May and the general election for November. Thus, a delay in answering until December 14, 2011 should have no impact on the ability of plaintiffs to make independent expenditures in 2012 in connection with appellate judicial races.

4. Before this litigation was filed, Gary Bartlett, Executive Director of the State Board of Elections, stated on record in a letter to the John Locke Foundation dated July 21, 2011, his view that the matching fund provision in a similar public financing program for the Town of Chapel

Hill should not be implemented. Ex. A, attached. The State Board of Elections met on September 8, 2011, and determined to amend the guidelines for the Town of Chapel Hill's program to delete any rescue fund provisions. Ex. B, attached. Consistently with these actions, Mr. Bartlett has met with leaders of the General Assembly and requested that the matching funds provision for the public financing of appellate judicial elections and the concomitant reporting requirement be repealed. Mr. Bartlett and the undersigned counsel have been informed by legislative leadership that repeal of the statutes will be taken up at its November 27, 2011 session.

5. Should the legislature repeal the matching fund and specific reporting provisions this litigation will be moot. If the legislature does not act as anticipated there will be adequate time between November 29, 2011, when they are anticipated to adjourn, and December 14 to answer or otherwise resolve the matter.

6. Opposing counsel have been consulted and do not consent to the requested extension.

WHEREFORE, Defendants respectfully request an extension of time to answer or otherwise respond up to and including December 14, 2011.

Respectfully submitted, this 14th day of November, 2011.

ROY COOPER,  
ATTORNEY GENERAL

/s/ Susan K. Nichols  
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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, November 14, 2011, electronically filed the foregoing **DEFENDANTS' SECOND MOTION FOR EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND** and **PROPOSED ORDER** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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*Local Civil Rule 83.1 Counsel for Plaintiffs*

Respectfully submitted,

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