

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DR. SHIVA AYYADURAI,

Plaintiff,

v.

WILLIAM FRANCIS GALVIN, in his official
capacity as the Secretary of the Commonwealth
of Massachusetts and his individual capacity,
MICHELLE TASSINARI, in her individual
capacity, DEBRA O'MALLEY, in her individual
capacity, AMY COHEN, in her individual capacity,
and NATIONAL ASSOCIATION OF STATE
ELECTION DIRECTORS

Defendant.

CIVIL ACTION
NO. 1:20-cv-11889-MLW

**OPPOSITION TO PLAINTIFF'S MOTION FOR EXTENSION OF TIME BY
SECRETARY WILLIAM FRANCIS GALVIN, MICHELLE TASSINARI, DEBRA
O'MALLEY, THE NATIONAL ASSOCIATION OF STATE ELECTION DIRECTORS,
AND AMY COHEN**

Defendants Secretary William Francis Galvin, Michelle Tassinari, Debra O'Malley, the National Association of State Election Directors, and Amy Cohen hereby submit this opposition to Plaintiff's motion seeking a six-week extension of the deadline that this Court set on June 16, 2021 [Dkt. No. 149] requiring Plaintiff to file by July 15, 2021 any new proposed amended complaint or a motion for leave to file such an amended complaint. Plaintiff has moved for a further extension because he made a clear-eyed choice to fire his former counsel on July 13, 2020, knowing that his amended complaint was due just two days later. Defendants oppose this motion for an extension not only because it would upset the schedule that the Court carefully

crafted at the June status hearing, but also because this request prejudices the ability of the Defendants – particularly the individuals sued in their personal capacities – to vindicate promptly their various immunities from suit and their motions to dismiss.

After months of litigation involving three iterations of complaints and various motions to dismiss, Plaintiff – at the Court’s urging – retained counsel in June 2021. The Court afforded Plaintiff one last opportunity to amend his complaint so that the Court could address the various legal issues presented by the Defendants’ motions to dismiss, including the various immunity defenses asserted by the Defendants. In providing this final chance to amend the pleadings the Court observed that claims against the individual defendants in their personal capacities were bereft of legal support and encouraged Plaintiff to dismiss these claims. Indeed, Plaintiff’s recently fired counsel represented to the Defendants this week that they intended to jettison all money damages claims against the individuals sued in their personal capacities. Now Plaintiff’s new attorney is apparently refusing to abide by this agreement and seeking an extension to reevaluate the case.¹

This delay effects real hardship on the individual defendants. As the Court explained at the recent status hearing, “any time a person is sued individually, whether they’re indemnified or not, you know, their livelihoods are at stake, their funds are at stake. You know, it’s a big thing.” Accordingly, the Court was eager to promptly resolve the immunity defenses asserted in this case without further delay, and it set a briefing schedule to accomplish that goal. Plaintiff’s motion for an extension upsets this schedule and only serves to delay the Defendants’ ability to

¹ It is Defendants’ understanding that Plaintiff’s former counsel had drafted an amended complaint, which as of July 13, 2020 they were prepared to file in accordance with the schedule set forth in the Court’s scheduling Order.

vindicate their immunities from suit. The Court should deny Plaintiff's new attorney's request for a six-week extension on this basis alone.

Plaintiff's new attorney's supposed need for more time is also at odds with his own personal filings with this Court. Mr. Cornell claims he needs an extension so that he can evaluate this case. Yet Mr. Cornell has previously sought to participate in this case – on his own behalf – as *amicus curiae*. On May 20, 2021, Mr. Cornell filed a motion in this case to express his personal interest in – and knowledge of – this case. In this filing, he claimed that although he represented Plaintiff in several other matters pending in this Court, “Mr. Cornell will not be representing Dr. Ayyadurai, nor will he be compensated in any fashion by him” in this case.² Because Mr. Cornell is familiar with Plaintiff and previously expressed a desire to participate in this case based on his own personal knowledge and expertise,³ there is no reason for the Court to postpone this case – or the resolution of Defendants' motions to dismiss – any longer. This motion for an extension should be denied.

Respectfully submitted,

Defendants,

WILLIAM FRANCIS GALVIN, in his official and individual capacities, MICHELLE TASSINARI, in her individual capacity, and DEBRA O'MALLEY, in her individual capacity,

By their attorneys,

² Mr. Cornell has represented Plaintiff in the following cases in this Court: Ayyadurai v. Gawker Media, LLC, 1:16-cv-10853-NMG, Ayyadurai v. Floor64, Inc., 1:17-cv-10011-FDS, Ayyadurai v. City of Cambridge, 1:18-cv-10772-RWZ, Ayyadurai v. University of Massachusetts, 1:18-cv-11929-RGS, Ayyadurai v. Kennedy, Jr., 1:20-cv-10881-WGY (filed May 8, 2020), and Ayyadurai v. Finn, 1:20-cv-10910-WGY (filed May 12, 2020). These last two cases remain open.

³ Defendants expect, however, that Mr. Cornell will need to withdraw his request to participate as *amicus curiae* should he represent Plaintiff if this case.

MAURA HEALEY
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/s/ Adam Hornstine

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NATIONAL ASSOCIATION OF STATE
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By their attorneys,

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Date: July 15, 2021

CERTIFICATE OF SERVICE

I, Adam Hornstine, Assistant Attorney General, hereby certify that I have this day, July 15, 2021, served the foregoing **Report**, upon all parties, by electronically filing to all ECF registered parties.

/s/ Adam Hornstine
Adam Hornstine