

Plaintiffs incorporate by reference the arguments set forth in the Opening Brief in Support of Defendants' Motion to Consolidate (the "Opening Brief") (D.I. 16) and submit this Joinder to address certain issues and reserve certain rights.

Scope of the Two Actions.

The recently filed Motion, Opening Brief, and joint letter (the "Joint Letter" (D.I. 17)), reveal important differences between the above-captioned action and the Gray Action. These differences do not preclude consolidation; however, they directly impact Plaintiffs' rights and are therefore specifically discussed herein.

First, the above-captioned action challenges both 11 *Del. C.* §§ 1464-67 ("HB 450") and 11 *Del. C.* §§ 1441, 1468-69A ("SS 1 for SB 6"), whereas the Gray Action only challenges HB 450. Plaintiffs reserve the right to make arguments and present evidence (if necessary) regarding their challenges to SS 1 for SB 6, should the matter be consolidated.

Second, Plaintiffs make additional claims and arguments not advanced by the plaintiffs in the Gray Action. While Plaintiffs consent to consolidation with the Gray Action, Plaintiffs reserve the right to continue advancing these additional and/or different arguments.

The Ongoing Scheduling Dispute.

As explained in the Joint Letter, Plaintiffs and Defendants have reached an impasse regarding an overall case schedule, including briefing on Plaintiffs' Motion for Preliminary Injunction (the "PI Motion") and Defendants' Motion to Dismiss (which focuses on four counts not covered in the PI Motion) (the "Motion to Dismiss").¹

¹ The parties in the Gray Action have reached the same impasse. *See generally* D.I. 19.

In summary, Plaintiffs propose entering a briefing schedule on the PI Motion as close as practicable to the briefing schedule provided for in the Local Rules (with accommodations for the upcoming holidays), and deferring briefing on the Motion to Dismiss until after a ruling on the PI Motion. D.I. 17 at 2, and Ex. A. Defendants, on the other hand, seek to either (i) bypass argument on the PI Motion and the Motion to Dismiss entirely in favor of a trial in October or November 2023 (D.I. 19 at 4); or (ii) engage in extensive discovery on the PI Motion which would result in argument in late-February or early-March 2023 (after completion of briefing on the Motion to Dismiss).

Plaintiffs disagree with Defendants' position on scheduling. By agreeing to consolidation, Plaintiffs are not waiving, and expressly reassert, their position on scheduling as set forth in the Joint Letter.

CONCLUSION

WHEREFORE, for the reasons set forth in the Opening Brief and Joint Letter, and subject to the reservation of rights discussed above, Plaintiffs respectfully request that this Court enter the Order submitted with the Motion consolidating the above-captioned action with the Gray Action for all purposes, and ordering that all documents which are filed after consolidation be filed and docketed solely in one consolidated civil action number.

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