

Court. In this Court, an answer, or responsive pleading in removed actions is governed by Rule 81(c), FRCP, under which a responsive pleading was due no later than August 15, 2022. Even though the case was removed on August 8, 2022, the County waited until late in the day, August 15, 2022, to file its request for an extension of time. Both filings could have taken place much earlier. In contrast, plaintiffs filed with Judge Chuang a request for leave to file a motion for summary judgment on Count V (the Second Amendment Claim) on August 12, 2022, only four days after the case was removed.

The County engaged in precisely this sort of last-minute tactics when it removed plaintiffs' original complaint in July 2021 on the last possible day. Now, the County seeks a 21-day extension of time as measured from the date this Court rules on the pending Motion to Consolidate. What the County mentions only in a footnote (at 3 n.4), is that on August 11, 2022, Judge Chuang denied, without prejudice, the County's Motion to Consolidate in No. 21-01736 for failure of the County to comply with the Court's Case Management Order, a procedure with respect to which the County is well familiar as that Order also controlled the County's removal of plaintiffs' original complaint a year ago, in July 2021. Yet, the County ignored the Case Management Order in filing its Motion to Consolidate and, when that gambit promptly failed, waited until August 15, 2022, to seek leave to file its Motion to Consolidate. The County's motion now requests a 21-day extension of time as measured from the time Judge Chuang rules on the Motion for Consolidation, assuming that leave is granted.

The Case Management Order contemplates that the Court will hold a "pre-motion conference" on requests for leave to file motions. No such conference has been scheduled. In prior proceedings in No. 21-01736, it took slightly over a week for such a pre-motion conference to be held, at which time the Court allowed plaintiffs to file a motion for remand of the State law claims.

state courts for construction of statute should not automatically be made.’”) (quoting *NAACP v. Bennett*, 360 U.S. 471 (1959) (*per curiam*). As explained in plaintiffs’ opposition to the Motion to Consolidate, the Second Amendment claim is not dependent on any resolution of the State law claims and thus should be adjudicated without delay. See *Mata v. Lynch*, 576 U.S. 143, 150 (2015) (“And when a federal court has jurisdiction, it also has a ‘virtually unflagging obligation ... to exercise’ that authority.”) (citation omitted). But even assuming *arguendo* that a State law question is pertinent, the Supreme Court has made clear that the proper approach is to certify controlling questions of State law to the State’s highest court. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 75-76 (1997). See also *McKesson v. Doe*, 141 S.Ct. 48 (2020) (*per curiam*) (vacating and remanding with instructions to certify a controlling but novel State law question to the State’s highest court). Maryland has precisely such a certification provision. MD Code, Courts & Judicial Proceedings, § 12-603.

Finally, the County’s last-minute, delay tactics should not be accepted even in the ordinary case. See, e.g., *Knopick v. Downey*, 2014 WL 12731991 at *1 n.1 (M.D. Pa 2014) (“Unfortunately, it has been a common occurrence for a party to file a motion for an extension of time at the last minute before the extension of an impending deadline. The court views this practice, which has become far too common, with antipathy, as it essentially requires the court to appease the contemptuous conduct or cause the client to suffer adverse consequences.”). But, these tactics are especially unacceptable where, as here, a government is alleged to be engaged in an ongoing denial of the plaintiffs’ constitutional rights. Denying the extension request will hardly cause Montgomery County to suffer adverse consequences. It will merely be forced to file an answer to the amended complaint. The County is a frequent-flyer litigant; it should not be allowed to assume

that its last-minute antics will be tolerated while it continues to violate plaintiffs' Second Amendment rights.

CONCLUSION

For the foregoing reasons, the County's motion for an indefinite extension of time should be denied.

Respectfully submitted,

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