

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

NICHOLAS HARRISON and
OUTSERVE-SLDN, INC.

Plaintiffs,

v.

PATRICK M. SHANAHAN, in his official
capacity as acting Secretary of Defense; MARK
ESPER, in his official capacity as the Secretary
of the Army; and the UNITED STATES
DEPARTMENT OF DEFENSE,

Defendants.

NO. 1:18-CV-00641-LMB-IDD

**PLAINTIFFS' CONSENT MOTION
TO MODIFY THE RULE 16(B) SCHEDULING ORDER**

Pursuant to Federal Rule of Civil procedure 16(b), Plaintiffs move – with Defendants' consent – for an enlargement of time to disclose their experts' opinions. The grounds for this motion are as follows:

1. On December 21, 2018, Judge Brinkema suggested that the Parties consider whether *Harrison et al. v. Shanahan et al.*, No. 1:18-cv-00641,¹ could be consolidated with the newly filed *Roe et al. v. Shanahan et al.*, No. 1:18-cv-01565, which also challenges the military's HIV policies. Dec. 21 Tr. 5:19-23 ("I think the government should be smart about figuring out about limiting the amount of resources that have to be spent. I should think that the two cases probably should be somehow, I don't mean merged, but consolidated.").

¹ Patrick M. Shanahan became the Acting Secretary of Defense on January 1, 2019, and is automatically substituted as a party in these cases pursuant to Federal Rule of Civil Procedure 25(d).

2. The Parties have met and conferred on the issue and have come to a stipulated agreement regarding consolidation of pre-trial discovery for the two cases. A joint motion reflecting this agreement is being filed contemporaneously with this motion.

3. To facilitate the parties' negotiations concerning consolidation, the parties moved for and were granted an extension for Defendants' responses to discovery requests and Plaintiffs' experts' opinions. (Dkt. 100).

4. To maintain the status quo while the Court considers the Parties' joint motion, Plaintiffs' seek an extension of their deadline to serve their experts' opinions from January 4, 2019 to January 9, 2019.

5. Defendants' counsel has indicated that Defendants consent to the relief sought through the instant motion.

6. A proposed order has been attached for this Court's convenience.

Dated: January 4, 2019

Respectfully submitted,

/s/ Andrew R. Sommer

Andrew R. Sommer
Virginia State Bar No. 70304
ASommer@winston.com
Cyrus T. Frelinghuysen (pro hac vice)
CFrelinghuysen@winston.com
John W.H. Harding
Virginia State Bar No. 87602
JWHarding@winston.com
WINSTON & STRAWN LLP
1700 K St., NW
Washington, DC 20006
T: (202) 282-5000

Scott A. Schoettes (pro hac vice)
SSchoettes@lambdalegal.org
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
105 W. Adams, Suite 2600
Chicago, IL 60603
T: (312) 663-4413

Anthony Pinggera (pro hac vice)
APinggera@lambdalegal.org
LAMBDA LEGAL DEFENSE AND
EDUCATION FUND, INC.
4221 Wilshire Blvd, Suite 280
Los Angeles, CA 90010
T: (213) 382-7600

Peter E. Perkowski (pro hac vice)
PeterP@outserve.org
OUTSERVE-SLDN, INC.
P.O. Box 65301
Washington, DC 20035-5301
T: (800) 538-7418

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January 2019, I caused the foregoing to be filed electronically using the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: January 4, 2019

Respectfully submitted,

/s/ Andrew R. Sommer
Andrew R. Sommer

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

NICHOLAS HARRISON and
OUTSERVE-SLDN, INC.

Plaintiffs,

v.

PATRICK M. SHANAHAN, in his official
capacity as acting Secretary of Defense; MARK
ESPER, in his official capacity as the Secretary
of the Army; and the UNITED STATES
DEPARTMENT OF DEFENSE,

Defendants.

NO. 1:18-CV-00641-LMB-IDD

[PROPOSED] ORDER

Upon consideration of Plaintiffs' consent motion to for an enlargement of the deadlines for the disclosure of plaintiffs' experts' opinions, from January 4, 2019, to and including January 9, 2019, it is hereby

ORDERED that the consent motion is GRANTED; and it is further

ORDERED that on or before January 9, 2019, at 5:00 p.m., Plaintiffs shall serve their expert witness disclosures on Defendants.

Date: _____

UNITED STATES MAGISTRATE JUDGE