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IN THE THIRD JUDICIAL DISTRICT COURT,
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF
UTAH, MORMON WOMEN FOR
ETHICAL GOVERNMENT, STEFANIE
CONDIE, MALCOLM REID, VICTORIA
REID, WENDY MARTIN, ELEANOR
SUNDWALL, JACK MARKMAN, and
DALE COX,

Plaintiffs,

v.

UTAH STATE LEGISLATURE; UTAH
LEGISLATIVE REDISTRICTING
COMMITTEE; SENATOR SCOTT
SANDALL, in his official capacity;
REPRESENTATIVE BRAD WILSON, in his
official capacity; SENATOR J. STUART
ADAMS, in his official capacity; and
LIEUTENANT GOVERNOR DEIDRE
HENDERSON, in her official capacity,

Defendants.

**DEFENDANTS' JOINT
MOTION TO STAY AND
MEMORANDUM IN SUPPORT**

Case No: 220901712

Honorable Dianna Gibson

RELIEF REQUESTED AND GROUNDS FOR RELIEF

Defendants Utah State Legislature, Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator Stuart Adams (collectively, “Legislative Defendants”), and Defendant Lieutenant Governor Deidre Henderson (together with Legislative Defendants, “Defendants”), by and through their respective undersigned counsel, jointly move the Court to stay this action pending the United States Supreme Court’s decision on appeal from *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022), *cert. granted sub nom. Moore v. Harper*, No. 21-1271, 2022 WL 2347621 (U.S. June 30, 2022).

SUMMARY OF RELIEF REQUESTED AND GROUNDS FOR RELIEF

On June 30, 2022, the United States Supreme Court granted certiorari in a case to decide whether the Elections Clause, enshrined in Article I, Section 4, Clause 1, of the United States Constitution, prohibits state courts from reviewing congressional districting maps under state constitutional provisions. *Moore v. Harper*, No. 21-1271, 2022 WL 2347621 (U.S. June 30, 2022).¹ A holding by the United States Supreme Court that state courts are prohibited from engaging in this type of review would deprive the Court of subject matter jurisdiction in the present case and would be dispositive of most, if not all, of Plaintiffs’ requested relief.

Rule 1 of the Utah Rules of Civil Procedure provides, in relevant part, that the rules “shall be liberally construed and applied to achieve the just, speedy, and inexpensive determination of every action.” A holding in favor of the petitioners in *Moore* would resolve

¹ The question the United States Supreme Court granted certiorari to determine is commonly known as the independent state legislature doctrine.

most, if not all, issues in the present case, avoiding unnecessary, expensive, and time-consuming litigation. Thus, Defendants move this court to stay these proceedings, in the interests of judicial economy and to preserve the possibility of a just, speedy, and inexpensive determination of the present matter, until the United States Supreme Court renders an opinion in *Moore*.

FACTUAL BACKGROUND

1. Plaintiffs challenge the constitutionality of the 2021 Congressional Plan adopted by the Utah Legislature based on their interpretation of multiple provisions of the Utah Constitution. (Compl. p. 78). They argue the 2021 Congressional Plan constitutes extreme partisan gerrymandering. (*Id.* p. 2).
2. Plaintiffs request relief in relation to use of the congressional plan for the 2024 primary and general elections. (*Id.* p. 78). Plaintiffs also challenge action taken by the Legislature to, in their words, “repeal” the Utah Independent Redistricting Commission and Standards Act passed via initiative as Proposition 4. (*Id.* p. 79).
3. The North Carolina Supreme Court struck down congressional redistricting maps enacted by the North Carolina Legislature based on various provisions of that state’s constitution. *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022), *cert. granted sub nom. Moore v. Harper*, No. 21-1271, 2022 WL 2347621 (U.S. June 30, 2022).
4. In *Harper*, defendants asserted that ““the federal constitution bars plaintiffs['] claims against the congressional plan’ under the Elections Clause, U.S. Const. art. I, § 4, cl. 1, because the word ‘Legislature’ in that clause forbids state courts from reviewing [whether] a congressional districting plan violates the state's own constitution.” *Harper*, 868 S.E.2nd at 551.²

² Legislative Defendants raised this argument as additional grounds showing the Court’s lack of subject matter jurisdiction to consider Plaintiffs’ claims. (Legislative Defendants’ Motion to Dismiss p.10, n. 10).

5. The North Carolina Supreme Court rejected the argument described in the preceding paragraph and the defendants petitioned the United States Supreme Court for certiorari on this argument. *See* Petition for Writ of Certiorari, *Moore v. Harper*, No. 21-1271, 2022 WL 2347621.
6. The United States Supreme Court granted certiorari, in *Moore v. Harper*, on the following question:

Whether a State’s judicial branch may nullify the regulations governing the “Manner of holding Elections for Senators and Representatives . . . prescribed . . . by the Legislature thereof,” U.S. CONST. art. I, § 4, cl. 1, and replace them with regulations of the state courts’ own devising, based on vague state constitutional provisions purportedly vesting the state judiciary with power to prescribe whatever rules it deems appropriate to ensure a “fair” or “free” election.

Petition for Writ of Certiorari, *Moore v. Harper*, No. 21-1271, 2022 WL 2347621.

7. The United States Supreme Court case in *Moore* will likely be resolved by the end of the next United States Supreme Court term in June or July of 2023.³

ARGUMENT

Rule 1 of the Utah Rules of Civil Procedure provides, in relevant part, that the rules “shall be liberally construed and applied to achieve the just, speedy, and inexpensive determination of every action.” To achieve these goals, “[a] district judge is charged with managing the court’s docket. That responsibility encompasses the task of assuring the ‘just, speedy, and inexpensive determination of every action.’” *Stichting Mayflower Mountain Fonds v. United Park City Mines Co.*, 2017 UT 42, ¶ 54, 424 P.3d 72, 82 (*quoting* Utah R. Civ. P. 1). And “[t]rial courts have broad discretion in managing the cases assigned to their courts.”

³ *See* Lee Epstein, William M. Landes & Richard A. Posner, *The Best for Last: The Timing of U.S. Supreme Court Decisions*, 64 *Duke L.J.* 991, 993 (2015) (noting that the vast majority of cases are decided within the same term they are heard, which usually concludes in June or early July each year).

Mayflower, 2017 UT 42, ¶ 57, 424 P.3d 72, 83 (quoting *Maxfield v. Herbert*, 2012 UT 44, ¶ 21 n.6, 284 P.3d 647). This discretion includes staying proceedings to achieve the goal of a just, speedy, and inexpensive resolution as Rule 1 directs. As recognized by the Utah Supreme Court:

It lies within the inherent powers of the courts to grant a stay of proceedings. It is a discretionary power, and the grounds therefor necessarily vary according to the requirements of each individual case. A common ground for a stay is the pendency of another action involving identical parties and issues and where a decision in one action settles the issues in another, or when the decision in an action is essential to the decision in another.

Lewis v. Moultrie, 627 P.2d 94, 96 (Utah 1981).

Plaintiffs challenge the constitutionality of the 2021 Congressional Plan adopted by the Utah Legislature based on their interpretation of multiple provisions of the Utah Constitution. (Compl. p. 78). Specifically, Plaintiffs assert that the 2021 Congressional Plan constitutes an extreme partisan gerrymander which, they claim, violates various provisions of the Utah Constitution. (*Id.* p. 2). This claim is based on a new interpretation of various provisions of the Utah Constitution.

In a similar case, the North Carolina Supreme Court struck down congressional redistricting maps enacted by the North Carolina Legislature based on various provisions of that state's constitution. *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022), *cert. granted sub nom. Moore v. Harper*, No. 21-1271, 2022 WL 2347621 (U.S. June 30, 2022). In *Harper*, the defendants asserted that “the federal constitution bars plaintiffs['] claims against the congressional plan’ under the Elections Clause, U.S. Const. art. I, § 4, cl. 1, because the word ‘Legislature’ in that clause forbids state courts from reviewing [whether] a congressional districting plan violates the state's own constitution.” (*Id.* at 390-391). In the present case, Legislative Defendants also noted

the possibility of the independent state legislature doctrine presenting a jurisdictional issue, and the Court’s decision in *Moore* will resolve this issue.⁴

In *Harper*, the court rejected the independent state legislature doctrine and went on to strike down the North Carolina Legislature’s congressional maps on state constitutional grounds. *Harper*, 868 S.E.2nd at 555. The defendants petitioned the United States Supreme Court for certiorari based on this doctrine. *Moore v. Harper*, No. 21-1271, 2022 WL 2347621. The United States Supreme Court granted certiorari on this issue:

Whether a State’s judicial branch may nullify the regulations governing the “Manner of holding Elections for Senators and Representatives . . . prescribed . . . by the Legislature thereof,” U.S. CONST. art. I, § 4, cl. 1, and replace them with regulations of the state courts’ own devising, based on vague state constitutional provisions purportedly vesting the state judiciary with power to prescribe whatever rules it deems appropriate to ensure a “fair” or “free” election.

Petition for Writ of Certiorari, *Moore v. Harper*, No. 21-1271, 2022 WL 2347621. The United States Supreme Court will consider this matter in its upcoming term and is expected to issue a decision by June or July of 2023. If the United States Supreme Court holds that a state court is prohibited, under the Elections Clause, enshrined in Article I, Section 4, Clause 1, of the United States Constitution, from reviewing congressional districting maps under state constitutional provisions, this Court will be prohibited from reviewing Utah’s congressional map or granting Plaintiffs’ requested relief because it will lack subject matter jurisdiction to proceed with the claims related to the congressional map. And, if the Supreme Court decides that a state’s judicial branch *may not* replace the Elections Clause regulations with “regulations of the . . . [C]ourt[‘s] own devising, based on vague state constitutional provisions purportedly vesting the state

⁴ Legislative Defendants’ Motion to Dismiss p. 10, n. 10.

judiciary with power to prescribe whatever rules it deems appropriate to ensure a ‘fair’ or ‘free’ election,”⁵ the holding would dispose of most, if not all, of the relief Plaintiffs seek.

If the Court proceeds with this case at this time, both the parties and the Court will spend significant time and expend extensive resources on a matter for which the court may lack jurisdiction. Whereas, if the Court grants a stay, the case may be resolved by simply waiting for the Supreme Court to render a decision in *Moore*. The most reasonable and prudent course of action is for the Court to stay these proceedings, pending a decision by the United States Supreme Court in *Moore* that may resolve the matter without having incurred unnecessary judicial and taxpayer expenses. A stay will comply with the mandate to apply the Utah Rules of Civil Procedure to ensure a just and inexpensive determination of this action and will not result in a significant delay.

CONCLUSION

For the foregoing reasons, Defendants respectfully request the court to stay this action until the United States Supreme Court issues a decision in the *Moore* case.

DATED this 21st day of July, 2022.

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⁵ Petition for Writ of Certiorari, *Moore v. Harper*, No. 21-1271, 2022 WL 2347621.

CERTIFICATE OF FILING

I certify that on this 21st day of July 2022, I electronically filed the foregoing,

DEFENDANTS’ JOINT MOTION TO STAY AND MEMORANDUM IN SUPPORT, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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