

UNITED DISTRICT COURT EASTERN
DISTRICT OF MICHIGAN SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS
OF MICHIGAN, et al.,
Plaintiffs,

v.

RUTH JOHNSON, in her official
capacity as Michigan Secretary of State
Defendant.

Civil Action No. 17-cv-14148

Hon. Eric L. Clay
Hon. Denise Page Hood
Hon. Gordon J. Quist

**INDIVIDUAL MICHIGAN LEGISLATORS REPLY IN SUPPORT OF
THEIR MOTION FOR STAY PENDING APPEAL**

Plaintiffs (collectively “Democratic Voters”) argue that a stay is improper in this matter. Their arguments are unpersuasive. Representatives Lee Chatfield and Aaron Miller, in their official capacities (collectively, “Legislative Intervenors” or “Legislators”), should have been allowed to intervene under this Circuit’s precedents. Since this Court’s denial of intervention is likely to be reversed on the merits, especially in light of the Sixth Circuit’s ruling with respect to the Congressional Intervenors, the only proper course is to stay this matter pending the currently ongoing appeal in the Sixth Circuit. *See League of Women Voters, et al. v. Johnson, et al.*, No. 18-1946.

Given the pace of the current proceedings at both this Court and at the Sixth Circuit, the Legislators submit this short reply in support of their Motion to Stay¹. Furthermore, Legislators respectfully request a ruling on the Motion for Stay by September 12, 2018 so that Legislators may swiftly move for stay in the Sixth Circuit, if necessary.

I. A Stay Is Appropriate in this Case.

Plaintiffs make several arguments in support of their contention that a stay is not appropriate in this case. Their primary argument appears to be that since Legislators and Congressional Intervenors are currently represented by the same counsel, there can be no inadequacy of representation. Plaintiffs, however, confuse counsel with clients. Legislators have several significant and unique interests that have been well articulated throughout the briefing of their intervention. These specific interests include: (1) the regulation of Legislators' official conduct; (2) the reduction in Legislators' or the successors' reelection chances; (3) the economic harm to Legislators caused by increasing costs of election or reelection, constituent services, and mid-decade reapportionment; and (4) the vested power of Michigan's legislative branch under the United States Constitution over the apportionment of congressional districts. None of these are shared by the Secretary or Congressional

¹ Defendant Ruth Johnson and Congressional Intervenors concur that a stay is appropriate in this case.

Intervenors. These interests are specific to these Legislators in their official capacities as both individual legislators and leadership members within the House of Representatives.

In addition, standing for the Legislative Intervenors and Congressional Intervenors may be different with respect to appellate rights. Legislative Intervenors would have standing to appeal an adverse ruling with respect to any of the three challenged maps because in their official capacities they would be called upon to act with respect to any remedy. Congressional Intervenors would possibly lack standing to appeal an adverse decision with respect to the state legislative maps even though they share counsel with the Legislative Intervenors.

Plaintiffs concur that Michigan legislators have been subject to discovery in this case. *See* ECF No. 110 at 4. This fact cuts squarely against the supposed “extreme prejudice” the Plaintiffs allege.² For above reasons, and the many others shared in Legislators’ briefing in this case, the Legislators’ Motion for Stay should be granted.

² The Plaintiffs attempt at histrionics in their footnote 2 should be disregarded. *See* ECF No. 110 at 5 n2. These statements were made before the intervention of the Congressional Intervenors was ordered by the Sixth Circuit. *See League of Women Voters of Mich.*, No. 18-1437, 2018 U.S. App. LEXIS 24684, (6th Cir. Aug. 30, 2018). Furthermore, the Plaintiffs once again appear to conflate the two intervenors because they are represented by the same counsel. The Legislators were prepared to make certain time concessions that were appropriate in the context their intervention. This line of reasoning is inapplicable to the context of Congressional Intervenors’ intervention.

CONCLUSION

For the foregoing reasons, and those reasons contained within Legislators' Motion to Intervene and Motion to Stay, Legislators respectfully request a stay be granted in this case. In either event, the Legislators request a ruling on their Motion for Stay by September 12, 2018, so that they may protect their rights in the Sixth Circuit, if necessary.

Dated: September 7, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2018, the forgoing has been electronically filed with the Clerk of the Court using the CM/ECF system. This system as sent a notice of electronic filing to all counsel of record.

/s/ Jason Torchinsky
Jason Torchinsky