

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS  
OF MICHIGAN, et al.,

Plaintiffs,

Civil Action No. 17-cv-14148

v.

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

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

Defendant.

---

**CONGRESSIONAL AND LEGISLATIVE DEFENDANTS-INTERVENORS'  
*EX PARTE* MOTION FOR EXPEDITED  
BRIEFING ON EMERGENCY MOTION TO STAY TRIAL**

The Congressional and Legislative Defendants-Intervenors, by and through their attorneys, respectfully move this Court to order expedited briefing on their simultaneously-filed Emergency Motion To Stay Trial (“Emergency Motion”) pending the final decisions of the United States Supreme Court in *Common Cause v. Rucho* (Sup. Ct. #18-422) and *Benisek v. Lamone* (Sup. Ct. 18-726). Specifically, Defendants-Intervenors request the Court order any response to the Emergency Motion be filed within 3 days after the Court enters an order on this motion and any reply be filed within 1 day thereafter.

In support of this motion, the Defendants-Intervenors rely on the facts, law,

and argument set forth in their accompanying Brief in Support. The undersigned counsel sought concurrence to the relief requested in this motion prior to filing. Both counsel for Plaintiffs and counsel for Defendant Secretary of State concur with the specific briefing schedule requested in this motion.

WHEREFORE, the Congressional and Legislative Defendants-Intervenors respectfully request the Court grant their motion and order expedited briefing on their simultaneously-filed Emergency Motion To Stay Trial pending the final decisions of the United States Supreme Court in *Common Cause v. Rucho* (Sup. Ct. #18-422) and *Benisek v. Lamone* (Sup. Ct. 18-726).

Respectfully submitted,

**Holtzman Vogel Josefiak  
Torchinsky PLLC**

/s/ Jason Torchinsky  
Jason Torchinsky  
Shawn Sheehy  
Phillip Gordon  
45 North Hill Drive, S 100  
Warrenton, Virginia 20106  
(540) 341-8800  
JTorchinsky@hvjt.law  
ssheehy@hvjt.law  
pgordon@hvjt.law  
Attorneys for Applicants

**Clark Hill PLC**

/s/ Brian D. Shekell  
Charles R. Spies  
Brian D. Shekell (P75327)  
212 E. Cesar Chavez Ave.  
Lansing, MI 48906  
(517) 318-3100  
cspies@clarkhill.com  
bshekell@clarkhill.com  
Attorneys for Applicants

Date: January 11, 2019

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS  
OF MICHIGAN, et al.,

Plaintiffs,

Civil Action No. 17-cv-14148

v.

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

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

Defendant.

---

**BRIEF IN SUPPORT OF *EX PARTE* MOTION FOR EXPEDITED  
BRIEFING ON CONGRESSIONAL & LEGISLATIVE DEFENDANTS-  
INTERVENORS' EMERGENCY MOTION TO STAY TRIAL**

**CONCISE STATEMENT OF THE ISSUE PRESENTED**

WHETHER THE COURT SHOULD ORDER EXPEDITED BRIEFING ON DEFENDANTS-INTERVENORS' EMERGENCY MOTION TO STAY TRIAL OF THIS CASE WHERE

1) ABSENT EXPEDITED BRIEFING, THE EMERGENCY MOTION MAY NOT BECOME RIPE FOR A DECISION UNTIL FEBRUARY 1, 2019, ONLY DAYS BEFORE THE FEBRUARY 5, 2019, START OF TRIAL; AND,

2) GOOD CAUSE EXISTS TO GRANT THE EMERGENCY MOTION IN LIGHT OF THE IMPENDING TRIAL DATE.

Movant's answer: Yes

Plaintiffs' answer: Yes

Defendant Secretary of State's Answer: Yes

This Court should answer: Yes

**CONTROLLING OR MOST APPROPRIATE AUTHORITY**

**Rules**

Federal Rule of Civil Procedure 6(c)(1)(C)

**Cases**

*Cooley v. Strickland*, No. 2:04-CV-1156, 2011 WL 320166, at \*1 (S.D. Ohio Jan. 28, 2011)

*Galloway v. Chesapeake Union Exempted Vill. Sch. Bd. of Educ.*, No. 1:11-CV-850, 2014 WL 5460538 (S.D. Ohio Oct. 27, 2014)

*Nartron Corp. v. Tuthill Corp.*, No. 05-70323, 2006 WL 2042609 (E.D. Mich. July 20, 2006)

*Sabol-Krutz v. Quad Elecs., Inc.*, No. 2:15-CV-13328, 2016 WL 6277083 (E.D. Mich. Oct. 27, 2016)

Trial is set to begin in this matter on February 5, 2019. (ECF No. 140). However, Defendants-Intervenors have filed an Emergency Motion to Stay Trial (“Emergency Motion”) based upon the pending Supreme Court decisions in *Common Cause v. Rucho* (Sup. Ct. #18-422) and *Benisek v. Lamone* (Sup. Ct. #18-726). As described in the Emergency Motion, in *Rucho* and *Benisek* the Supreme Court will resolve currently unanswered questions regarding the justiciability, legal standards, factual questions and appropriate remedy in political gerrymandering claims.

Put another way, the Supreme Court’s decisions in *Rucho* and *Benisek* will determine whether this lawsuit should be dismissed, thereby completely obviating the need for trial, or, alternatively, will determine the legal principles to be applied to this case and the appropriate factual questions to be resolved at trial. If the Court is inclined to grant the Emergency Motion—and Defendants-Intervenors believe it should—then an expedited briefing schedule will allow the Court to make a decision sooner and thereby relieve the Parties and the Court of the unnecessary expenditure of time and resources to prepare for trial given that the standard briefing schedule would not expire until the eve of trial.

Under the briefing schedule provided for by Eastern District of Michigan Local Rule 7.1(e)(2), the Emergency Motion would typically not become ripe for a decision until 21 days after its filing, or February 1, 2019. This means the motion

would ordinarily not be decided until, at the earliest, four days before trial is set to begin in this matter. The Parties, in that scenario, would have no choice but to complete all trial preparations before the motion is ripe for a decision by the Court.

Federal Rule of Civil Procedure 6(c)(1)(1), provides the Court with authority to resolve the Emergency Motion sooner.

(1) In General. A written motion and notice of the hearing must be served at least 14 days before the time specified for the hearing, with the following exceptions:

...

(C) when a court order--which a party may, for good cause, apply for ex parte--sets a different time.

Such good cause is shown where a time constraint exists due to an impending trial date. *See Galloway v. Chesapeake Union Exempted Vill. Sch. Bd. of Educ.*, No. 1:11-CV-850, 2014 WL 5460538, at \*8 (S.D. Ohio Oct. 27, 2014) (setting four day briefing schedule on motion *in limine* where trial was set to begin in two weeks); *Cooey v. Strickland*, No. 2:04-CV-1156, 2011 WL 320166, at \*1 (S.D. Ohio Jan. 28, 2011) (noting expedited briefing on a motion had been ordered in light of an impending trial date); *Nartron Corp. v. Tuthill Corp.*, No. 05-70323, 2006 WL 2042609, at \*1 (E.D. Mich. July 20, 2006) (noting expedited briefing was ordered to allow resolution of a motion prior to jury selection); *see also Sabol-Krutz v. Quad Elecs., Inc.*, No. 2:15-CV-13328, 2016 WL 6277083, at \*1 (E.D.

Mich. Oct. 27, 2016) (noting expedited briefing on a motion was ordered as a result of “time sensitive issues”).

Good cause exists in the instant cause due to time constraints imposed by the impending trial date. Moreover, Defendants-Intervenors filed this motion in a timely fashion after the Supreme Court recently announced that, in March of 2019, it will consider dispositive issues associated with the gerrymandering claims at issue in this lawsuit.

### **CONCLUSION**

For the foregoing reasons, the Congressional and Legislative Defendants-Intervenors respectfully request the Court grant the motion and order expedited briefing on the simultaneously-filed Emergency Motion To Stay Trial pending the final decisions of the United States Supreme Court in *Common Cause v. Rucho* (Sup. Ct. #18-422) and *Benisek v. Lamone* (Sup. Ct. 18-726).

**Holtzman Vogel Josefiak  
Torchinsky PLLC**

/s/ Jason Torchinsky  
Jason Torchinsky  
Shawn Sheehy  
Phillip Gordon  
45 North Hill Drive, S 100  
Warrenton, Virginia 20106  
(540) 341-8800  
JTorchinsky@hvjt.law  
ssheehy@hvjt.law  
pgordon@hvjt.law

**Clark Hill PLC**

/s/ Brian D. Shekell  
Charles R. Spies  
Brian D. Shekell (P75327)  
212 E. Cesar Chavez Ave.  
Lansing, MI 48906  
(517) 318-3100  
cspies@clarkhill.com  
bshekell@clarkhill.com  
Attorneys for Defendants-Intervenors



Attorneys for Defendants-Intervenors

Date: January 11, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all of the parties of record.

**CLARK HILL PLC**

*/s/ Brian D. Shekell*