No. _____

In The
Supreme Court of the United States

IN RE: LEE CHATFIELD, ET AL.,
Petitioners,

On Petition for a Writ of Mandamus to the
United States District Court for the
Eastern District of Michigan

EMERGENCY PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED

Did the three-judge panel in the Eastern District of Michigan abuse its discretion when it denied the Congressional and Legislative Defendants-Intervenors' Emergency Motion to Stay Trial pending resolution of two cases currently pending in this Court – *Common Cause v. Rucho,* 318 F. Supp. 3d 777, 799 (M.D.N.C. 2018), *cert. granted*, 138 S. Ct. 923 (2018) (No. 18-422) and *Benisek v. Lamone,* No. 1:13-cv-03233-JKB, 2018 U.S. Dist. LEXIS 190292 (D. Md. Nov. 7, 2018), *cert. granted*, 202 L.Ed.2d 510 (U.S. Jan. 4, 2019) (No. 18-726), where i) the issues before the Court in *Rucho* and *Benisek* are applicable, instructive and dispositive to the present case, ii) trial in the instant case is set to begin on February 5, 2019, and iii) this Court has ordered expedited consideration of threshold jurisdictional issues in *Rucho* and *Benisek* that are dispositive to the instant case.

PARTIES TO THE PROCEEDING

Petitioners are Intervenor-Defendants Representative Lee Chatfield, in his official capacity as Speaker Pro Tempore of the Michigan House of Representatives, Representative Aaron Miller, in his official capacity as a Member of the Michigan House of Representatives (collectively, "Legislators"), and the Michigan Republican Congressional Delegation.

Respondents are the League of Women Voters of Michigan, Roger J. Brdak, Frederick C. Durhal, Jr., Jack E. Ellis, Donna E. Farris, William J. Grasha, Rosa L. Holliday, Diana L. Ketola, Jon G. LaSalle, Richard W. Long, Lorenzo Rivera, and Rashida H. Tlaib. They are Plaintiffs in the District Court action below (the "District Court Action").

Respondent Ruth Johnson, in her official capacity as Michigan Secretary of State, was the original named Defendant in the District Court Action. Jocelyn Benson, as the newly elected Secretary of State of Michigan, has since been automatically substituted in for Ruth Johnson as a party defendant by order of the District Court. Jocelyn Benson is now the party being sued in her official capacity as Michigan Secretary of State. The Secretary remains a Defendant in the District Court action below and is a Respondent here.

Finally, the three-judge district court for the United States District Court for the Eastern District of Michigan is also a Respondent to this Petition.

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PRELIMINARY STATEMENT

The primary issues below have been the justiciability of Plaintiffs' claims, whether Plaintiffs have standing to bring the same, and the accepted legal and factual standard for judicial adjudication of such claims, if they even exist. On January 4, 2019, this Court announced that, in March of 2019, it will consider jurisdictional and other likely dispositive issues associated with partisan gerrymandering claims in *Common Cause v. Rucho,* 318 F. Supp. 3d 777, 799 (M.D.N.C. 2018), *probable jurisdiction noted*, 138 S. Ct. 923 (2018) (No. 18-422) and *Benisek v. Lamone,* No. 1:13-cv-03233-JKB, 2018 U.S. Dist. LEXIS 190292 (D. Md. Nov. 7, 2018), *probable jurisdiction noted*, 202 L.Ed.2d 510 (U.S. Jan. 4, 2019) (No. 18-726). The specific dispositive gerrymandering issues common to both *Rucho* and *Benisek* are precisely the same dispositive issues currently before the three-judge panel in the District Court; namely, whether such gerrymandering disputes are justiciable and, if so, what legal and factual standards courts must apply when resolving those disputes.

Rucho and *Benisek* are thus directly applicable, instructive, and dispositive to the District Court Action, and the three-judge panel has recognized as much. Indeed, in denying the Intervenor-Defendants' Motion for Summary Judgment in the District Court, the panel relied heavily on the lower court decisions in *Rucho* and *Benisek* that are now on review to this Court (indeed, in that November 30, 2018 Opinion and Order denying summary judgment, the panel cited and

relied upon *Rucho* at least *fifty-five times* and cited and relied upon *Benisek* twice).

Trial in the District Court is set to begin on February 5, 2019. However, despite the directly applicable and dispositive nature of *Rucho* and *Benisek* to the below action, and despite the fact that the trial would commence while briefing in *Rucho* and *Benisek* are ongoing and approximately a month before this Court considers the *Rucho* and *Benisek* cases at oral argument, the District Court appears disinclined to issue a prompt ruling on the Motion for Stay. *See* Intervenor Defs.' Mot. to Stay Trial, ECF No. 183.

On January 22, 2019, the panel convened an off the record conference to discuss a number of pre-trial matters. *See* Minute Entry of Jan. 23, 2019. At this conference, Intervenor-Defendants discussed the pending Motion to Stay pending decisions in *Rucho* and *Benisek*. The Plaintiffs and the Defendant Secretary of State each discussed their desire to continue trial to in order to conduct settlement discussions and possible resolution of the case on the merits via a consent decree. The three-judge panel was clear that they would not be staying or adjourning the trial in this case for any reason. Defendant-Intervenors requested additional clarity as to the District Court's position, at which point the three-judge panel abruptly moved on to one minor additional matter for the Secretary of State and ended the conference. In summation, Plaintiffs and Defendant both generally concurred with the Intervenor-Defendants' desire to stay or postpone trial proceedings. Defs.' Resp. Mot. Stay Trial, ECF

No. 199; Pls.' Resp. Mot. Stay Trial, ECF No. 200). Nonetheless, the District Court is seemingly disinclined to issue an order with sufficient time to appeal.

There are several reasons why a stay entered by this Court is appropriate and warranted in this instance. First, this Court agreed to hear *Rucho* and *Benisek* in March of 2019, shortly after trial in the District Court is set to commence. *Rucho* and *Benisek* involve the same claims as the case below, and both *Rucho* and *Benisek's* lower court decisions served as the underpinning of the denial of the Motions for Summary Judgment in this case. In *Rucho* and *Benisek*, as in the instant case, this Court will ultimately resolve currently unanswered questions regarding justiciability, legal standards, factual inquiries, and appropriate remedy in political gerrymandering claims.

Second, issuing a stay in this case would serve the interests of judicial economy. This case is the first of three set for trial before three-judge federal district courts alleging virtually identical claims. After this case, currently set for trial on February 5, 2019, the Southern District of Ohio has a nearly identical matter set for a two week trial beginning March 4, 2019. *Ohio A. Philip Randolph Institute, et. al. v. Ryan Smith, et. al.* (S.D. Oh. July 17, 2018) (*see* ECF No. 41 – Calendar Order setting trial for March 4, 2019). And, immediately following that case, the Western District of Wisconsin has trial set based on the remand from this Court in *Whitford,* set for April 23, 2019, combined with a trial in a second action alleging many of the same claims.

William Whitford, et. al. v. Beverly R. Gill, et. al. (W.D. Wisc. Oct. 17, 2018, Case Nos. 15-cv-421-jdgp and 18-cv-763-jdp) (*see* ECF No. 214 – Preliminary Pretrial Conference Order setting trial for April 23, 2019). The non-prevailing party in the below action, and those in the next two trials in nearly identical cases, are nearly certain to bring appeals directly to this Court. Rather than invite three more cases into this Court's appellate docket treading the same ground as *Rucho* and *Benisek*, a stay issued in this case would be a signal to these other two District Courts to await further guidance from this Court before proceeding. Additionally, in the event that this Court were to determine that there is no federal court jurisdiction of these types of claims, a stay would help to preserve the political neutrality of this Court and that of the lower federal courts.

Third, staying the proceedings in the District Court Action in light of *Rucho* and *Benisek* is in the best interests of the parties and the court alike because, if this Court concludes that political gerrymandering claims are non-justiciable, then the upcoming trial in the District Court will constitute a waste of time, money, and resources for the litigants as well as the three-judge panel (consisting of one circuit judge and two district court judges). Contrarily, if this Court recognizes these claims as justiciable, its opinions in *Rucho* and *Benisek* will provide guiding and controlling principles with regard to the below action and may alter the factual and legal claims and presentations necessary to maintain or defend the case.

Fourth, if trial in the District Court proceeds as scheduled and the panel rules against Defendant and the Intervenor-Defendants, any remedy the panel attempts to impose will likely be stayed while this Court considers, and ultimately issues, its opinions in *Rucho* and *Benisek*. The most likely consequence of proceeding under this cloud of uncertainty is irreparable confusion by the public as to the status of Michigan's State House, State Senate, and Congressional Districts.

For all these reasons and those set forth more fully herein, Petitioners/Intervenor-Defendants respectfully request that this Court issue a writ of Mandamus to the District Court, ordering the District Court to immediately stay trial pending this Court's final decisions in *Rucho* and *Benisek*.

JUDICIAL ORDER BELOW

The January 22, 2019 Status Conference (off record) in which the District Court, Clay, Circuit Judge; Hood, Chief District Judge; and Quist, District Judge, were neither inclined to grant the Motion for Stay nor issue a timely ruling on the Motion to facilitate this appeal.

JURISDICTION

This Court has jurisdiction to grant a writ of Mandamus. *See* 28 U.S.C. § 1651(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

U.S. Const. art. I, § 4.

a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. § 1651(a) and (b).

STATEMENT OF THE CASE

I. FACTUAL/PROCEDURAL BACKGROUND OF THE DISTRICT COURT ACTION

On August 9, 2011, Michigan Governor Snyder signed into law Public Acts 128 and 129 of 2011. These Acts codified, respectively, the boundaries of Michigan's 14 Congressional, 38 State Senate, and 110 State House districts (the "Current

Apportionment Plan"). On December 22, 2017 – over six years and three election cycles after the enactment of the Current Apportionment Plan – Plaintiffs, The League of Women Voters of Michigan, Roger J. Brdak, Frederick C. Durhal, Jr., Jack E. Ellis, Donna E. Farris, William "Bill" J. Grasha, Rasa L. Holliday, Diana L. Ketola, Jon "Jack" G. Lasalle, Richard "Dick" W. Long, Lorenzo Rivera, and Rashida H. Tlaib (collectively, "Plaintiffs") filed a Complaint seeking declaratory and injunctive relief, claiming that the Current Apportionment Plan is unconstitutional in that it constitutes an impermissible partisan gerrymander and violates Plaintiffs' rights as protected by the First Amendment and Equal Protection Clause. Specifically, Plaintiffs essentially contend that the Current Apportionment Plan impermissibly maximizes the number of state Republican congressional representatives, i.e., that the current plan is unconstitutional because there are too many Republicans in both delegations. ECF No. 1(Page ID# 1-34).

Plaintiffs' Complaint asserts claims under 42 U.S.C. §§ 1983, 1988, and the First and Fourteenth Amendments to the United States Constitution. Plaintiffs allege that by continuing to implement the Current Apportionment Plan, Defendant Secretary of State has impermissibly discriminated against Plaintiffs as "likely Democratic voters" in contravention of the Equal Protection Clause of the Fourteenth Amendment, and unreasonably burdened Plaintiffs' rights to express their political views and associate with the political party of their choice in contravention of the First Amendment.

Plaintiffs seek to enjoin the further use of the current district lines in the upcoming congressional and state legislative elections scheduled for 2020. And, while the state Senate elections in Michigan are not scheduled again until 2022 (after the next constitutionally required redistricting), the District Court denied Motions to Dismiss portions of the case related to the State Senate because the District Court indicated there is a possibility it could order special elections. (*See* ECF No. 88).

Ruth Johnson, in her official capacity as Michigan Secretary of State, was the original named Defendant, and moved to dismiss the Plaintiffs' Complaint under Fed. R. Civ. P. 12(b)(1) on the basis that Plaintiffs lacked standing to pursue statewide claims. ECF No. 11. On May 16, 2018, the three-judge panel in the District Court dismissed Plaintiffs' statewide claims but held that Plaintiffs had standing to pursue district-specific claims. ECF No. 54.

On November 6, 2018, the Michigan General Election was held and the Democratic Party candidate, Jocelyn Benson, was elected as the new Secretary of State of Michigan. She assumed her office on January 1, 2019. On January 15, 2019, Jocelyn Benson was automatically substituted as a party defendant. ECF No. 194.

Representative Lee Chatfield, in his official capacity as Speaker Pro Tempore of the Michigan House of Representatives, and Representative Aaron Miller, in his official capacity as Chairman of the Elections and Ethics Committee of the Michigan

House of Representatives, are Members of the Michigan Legislature (collectively, "Legislators"), and, along with the Michigan Republican Congressional Delegation, are Intervenor-Defendants in this matter.[1]

The primary issues in the District Court Action have been the justiciability of Plaintiffs' claims, whether Plaintiffs have standing to bring same, and what the accepted/manageable standard is for such claims. The parties have engaged in dispositive motions relevant to the issues now present. Namely, on September 21, 2018, Plaintiffs moved for partial Summary Judgment with regard to Defendant Johnson's and the Intervenor-Defendants' affirmative defense of laches (ECF No. 117); Defendant Johnson filed a Motion to Dismiss and for Summary Judgment arguing, *inter alia*, that Plaintiffs' claims are non-justiciable (ECF No. 119); and the Intervenor-Defendants moved for summary judgment on the basis that Plaintiffs lack standing to pursue their claims and on the basis of laches. ECF No. 121. On November 30, 2018, the three-judge District Court panel denied each of the parties' foregoing dispositive motions. ECF No. 143.

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[1] For both groups of Intervenor-Defendants, intervention was granted by the United States Court of Appeals for the Sixth Circuit after the District Court denied intervention. August 30, 2018 Opinion granting permissive intervention to the Republican Congressional Delegation, ECF No. 103;December 20, 2018 Order granting intervention to Rep. Lee Chatfield and Rep. Aaron Miller, (ECF No. 166.

Under the current Case Management Order in the District Court Action, trial briefs must be filed by January 28, 2019, and trial is set to begin on February 5, 2019, at 9:00 a.m. ECF No. 14.

II. ***RUCHO* AND *BENISEK***

As the underlying District Court Action was ongoing – i.e., as the parties hereto were litigating whether partisan gerrymandering claims were justiciable and the merits/standards of same – this Court announced on January 4, 2018 that it will consider dispositive issues associated with such gerrymandering claims (as exist in the present case) in *Common Cause v. Rucho,* 318 F. Supp. 3d 777, 799 (M.D.N.C. 2018), *cert. granted*, 138 S. Ct. 923 (2018) (No. 18-422) and *Benisek v. Lamone,* No. 1:13-cv-03233-JKB, 2018 U.S. Dist. LEXIS 190292 (D. Md. Nov. 7, 2018), *cert. granted*, 202 L.Ed.2d 510 (U.S. Jan. 4, 2019) (No. 18-726) in March of 2019.

On January 8, 2019, this Court ordered that appellants' briefs on the merits are to be filed on or before February 8, 2019, and appellees' briefs on the merits are to be filed on or before March 4, 2019, in both *Rucho* and *Benisek*. The specific dispositive gerrymandering issues common to both *Rucho* and *Benisek* are the same dispositive issues currently before the three-judge panel in the District Court Action; namely, whether gerrymandering/redistricting disputes are justiciable and, if so, what standards courts must apply in resolving these disputes.

III. INTERVENOR-DEFENDANTS' MOTION TO STAY

In light of this Court's expedited review in *Rucho* and *Benisek*, and the fact that trial is set to begin in the District Court on February 5, 2019, Intervenor-Defendants filed an Emergency Motion to Stay Trial (ECF No. 183) and an Ex Parte Motion for Expedited Briefing on Emergency Motion to Stay Trial (ECF No. 184) on January 11, 2019. By those Motions, Intervenor-Defendants sought to stay trial in the District Court until *Rucho* and *Benisek* – which are dispositive to the issues in the District Court – are decided. The Plaintiffs and Defendant both concurred in the Intervenor-Defendants' Motion to Stay Trial and agreed that a stay was appropriate and necessary. Def.'s Resp. Mot. Stay Trial, ECF No. 199;–Pls.' Resp. Mot. Stay Trial, ECF No. 200.[2]

The three-judge panel in the District Court recognized the applicability of *Rucho* and *Benisek* to the outcome of the dispositive issues in this matter, as the panel's denial of the Intervenor-Defendants' Motion for Summary Judgment relies heavily on the lower court decisions in *Rucho* and *Benisek* (which are now on review to this Court). ECF No. 143. In fact, in the panel's November 30, 2018, Opinion and Order denying summary judgment, *Rucho* was cited

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[2] Although all Parties agreed that trial should be stayed, they did so for different reasons. Plaintiffs and Defendant agreed to a stay to pursue settlement. Congressional and Legislative Intervenors agreed to a stay pending the outcome of *Rucho* and *Benisek*.

and relied upon at least fifty-five times and *Benisek* was cited and relied upon twice. *Id.*

On January 22, 2019, the district court panel made it clear that neither a stay will be granted nor will a order be forthcoming. However, clearly a resolution and ruling by this Court in the *Rucho* and *Benisek* cases will be directly applicable, instructive, and dispositive with regard to the below District Court action, and an Order staying trial thereof is warranted.

STANDARD OF REVIEW AND LEGAL STANDARDS

The Supreme Court has the power to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). To obtain a writ of mandamus, the applicant must demonstrate that he has "no other adequate means to attain the relief he desires." *Cheney v. United States Dist. Court*, 542 U.S. 367, 380 (2004). The applicant must then demonstrate that the applicant's right to the writ is "clear and indisputable." *Id.* at 381. Finally, the applicant must demonstrate that the writ is otherwise appropriate under the circumstances. *See id.*

A writ is appropriate in matters where the applicant can demonstrate a "judicial usurpation of power" or a clear abuse of discretion. *See id.* at 380 (citations and quotations omitted); *see also Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26 (1943) ("The traditional use of the writ in aid of appellate

jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.").

ARGUMENT

I. THIS COURT'S PRECEDENT REQUIRED THE DISTRICT COURT TO STAY FROM PROCEEDING WITH TRIAL

It is well-settled that "[i]n the exercise of sound discretion, [a court] may hold one lawsuit in abeyance to abide the outcome of another, **especially where the parties and the issues are the same**." *American Life Ins. Co. v. Stewart*, 300 U.S. 203 (1937) (emphasis added). As noted *supra*, the issues pending in this District Court Action are precisely the same as those pending before this Court in *Rucho* and *Benisek*.

In addition, this Court's interest in managing its docket counsels in favor of staying this proceeding. The below action is the first in a waterfall of cases heading to this Court's docket. The cases below involve nearly identical factual and legal questions. Courts, including the Sixth Circuit from where two of these cases arise, have often stayed cases pending resolution of issues pending before this Court. *In re Embry*, 831 F.3d 377 (6th Cir. 2016); *See also* Order Holding Briefing in Abeyance pending resolution of case before this Court, *Germain v. Teva Pharmaceuticals, USA*, 756

F.3d 917, (6th Cir. 2014 May 30, 2013) (No. 12-5368), Doc. 100-1.

II. THERE ARE NO OTHER ADEQUATE MEANS TO OBTAIN THE RELIEF PETITIONERS SEEK

Petitioners/Intervenor-Defendants do not have any adequate alternative means to obtain the relief they seek because denials of stays are not appealable as a final judgment. *See Catlin v. United States*, 324 U.S. 229, 233 (1945) ("A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment."); *see also Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 277-78 (1988) (holding that a three-judge panel's denial of a stay is not appealable under the collateral-order doctrine, but noting the availability of an extraordinary writ when entitlement to relief is clear); *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 83 (1981) (recognizing that the denial of a stay is not appealable through the interlocutory appeal statute because it is not an injunction altering the status quo of the parties).

Here, there are several reasons why Petitioners/Intervenor-Defendants cannot wait until the *Rucho* and *Benisek* cases are decided by this Court, as trial in the District Court Action is set to commence prior to this Court's decisions in *Rucho* and *Benisek*, and this Court's decisions in those cases are instructive and dispositive with regard to the case below.

A. The Dispositive Nature of *Rucho* and *Benisek* Warrants a Stay

The primary issues in the District Court concern the justiciability of partisan gerrymandering claims, whether Plaintiffs even have standing to pursue same, and if so, the appropriate or accepted standard governing disposition and resolution of such claims. These are the exact same issues that this Court will address and resolve in the *Rucho* and *Benisek* cases in March 2019, **less than a month** after trial is set to commence. *Rucho* and *Benisek* involve the same claims as the below action; indeed, the three-judge panel in the District Court Action recognized the applicability of *Rucho* and *Benisek* to the outcome of the dispositive issues in this matter, as the panel's denial of the Intervenor-Defendants' Motion for Summary Judgment relies heavily on the lower court decisions in *Rucho* and *Benisek*. ECF No. 143. In fact, in the panel's Opinion and Order denying summary judgment, *Rucho* was cited and relied upon at least fifty-five times and *Benisek* was cited and relied upon twice. *Id*. If *Rucho* or *Benisek* are reversed even in part, theywill have a significant impact on the panel's consideration of the matter.

In *Rucho* and *Benisek*, this Court will ultimately resolve currently unanswered questions regarding the justiciability, legal standards, and factual inquiries and appropriate remedy in partisan gerrymandering claims (as in the instant case). An order staying trial in the District Court is thus critical and necessary because this Court's rulings in *Rucho* and *Benisek* will dictate – and be dispositive

of – the justiciability, scope, and standards in the below case.

B. The Goals of Judicial Economy Warrant a Stay

Staying the proceedings in the District Court in light of *Rucho* and *Benisek* is in the best interests of the parties and the court alike because, if this Court concludes that partisan gerrymandering claims are non-justiciable, then the upcoming trial in the District Court will constitute a waste of time, money, and resources for the litigants and the three-judge panel alike. Contrarily, if this Court recognizes these claims as justiciable, its opinions in *Rucho* and *Benisek* will provide guiding and controlling principles that may alter the factual and legal claims and presentations necessary to maintain or defend the case.

Rucho and *Benisek* are set to be heard by this Court by March of 2019, and opinions will likely issue no later than June of 2019. Given the dispositive nature of *Rucho* and *Benisek* on the below case, the three-judge panel could reschedule trial in this matter to July or August and permit time for the Court, the parties, and counsel to better address this matter upon receipt of guidance and instruction from this Court. There is little point in holding a trial that could last the better part of four weeks and put the court, parties, and counsel through trial preparation and the accompanying costs and expenses, and then require post-trial briefing, as this Court is hearing oral arguments in two cases (*Rucho*

and *Benisek*) that will be controlling on the District Court's analysis of the facts and law.

Moreover, proceeding with a trial where the elements of the claim, the relevant factual issues, and the federal courts' basic jurisdiction over the case are currently being reviewed by this Court potentially means that the three-judge district court panel might decide a case over which it lacks jurisdiction, or the parties could be presenting facts and analysis that are subject to alteration by forthcoming opinions from this Court. Further, if the trial below proceeds as scheduled and the panel rules against Defendant and the Intervenor-Defendants, any remedy the panel attempts to impose will likely be stayed while this Court considers, and ultimately issues, its opinions in *Rucho* and *Benisek*.

Furthermore, with two more nearly identical cases proceeding to trial before three-judge district courts in the next three months which are legally required to take appeals to this Court, this Court's management of its docket would be aided by pausing the trial and signaling to the other two district courts that they should consider doing the same while this Court considers *Rucho* and *Benisek*.

C. The Public Welfare Concerns Warrant a Stay

Holding a trial while this Court is hearing controlling cases runs the risk of creating the very confusion this Court warned against in *Purcell v. Gonzales*, 549 U.S. 1, 4 (2006). Given that this Court

will be reviewing and ultimately deciding the two main cases that the three-judge panel has relied upon to allow the case below to proceed, the confusion that will be imposed on the constituents of the Petitioners will be substantial, and runs the risk of confusing millions of residents of Michigan about the status of their representation in Lansing and Washington. There is no doubt that awaiting guidance from this Court before conducing what likely will be a highly publicized trial, putting political leadership from both sides of the aisle on the stand in federal court, and forcing the expenditure of significant amounts of public dollars by the governmental defendants, all while this Court is reviewing controlling and potentially dispositive cases in *Rucho* and *Benisek*, suggest that the public welfare is best served by staying the below case until June 2019.

If trial in the District Court is stayed for a few months while all of the participants await guidance from this Court, then expedited proceedings can be held in the summer and fall of 2019 to, *inter alia*, finalize Michigan's lines for 2020. On the other hand, if this Court determines that federal courts do not have jurisdiction over these types of partisan gerrymandering claims, or that judicially manageable standards still do not exist, then this case can be dismissed without trial and without posing any risk to the public welfare.

Assuming *arguendo* that the three-judge panel rules in favor of Plaintiffs below, it will need to issue an Opinion and Order that provides Michigan's

legislature with specific guidance as to how a new redistricting plan must be drafted.

Moreover, it is important to note that there is no state or federal election presently impending, and thus there is no need for the three-judge panel to rush to a decision within the next two months, so there is no specific need for clarity/resolution with regard to the substantive redistricting claims contained in Plaintiffs' Complaint before this Court rules on *Rucho* and *Benisek*. The most likely consequence of rushing to trial and proceeding under this cloud of uncertainty is the public's irreparable confusion as to the status of Michigan's State House, State Senate, and Congressional Districts. The same holds true for the other two trials upcoming in three-judge district courts.

D. The Lack of Hardship to Plaintiffs Warrants a Stay

It is important to note the relative hardships of the parties below. Plaintiffs slept on their rights and waited seven years and three election cycles before bringing their claims. Indeed, the three-judge panel recognized the materiality of Plaintiffs' delay in seeking relief by reserving decision on whether laches should result in dismissal of the case. ECF No. 143. And, the district court has raised the possibility of special State Senate elections even though the next regularly scheduled Senate elections in Michigan are not until 2022, after the post-2020 Census is set to occur.

Census day 2020 is still fourteen months away, new data will be released in early 2021, and a wholly new process for drawing maps in Michigan will be in place for the 2020 redistricting as a result of a ballot measure adopted in November 2018 instituting a redistricting commission for legislative and congressional reapportionment. There is no additional hardship on Plaintiffs if the below case is resolved in the second half of 2019 rather than the first half, and certainly no hardship that Plaintiffs did not bear without complaint for three election cycles before bringing suit.

Such an expedited schedule for trial is further unnecessary as the Current Apportionment Plan went into effect in 2011 and has been in use ever since. Plaintiffs waited over six years and three election cycles after the enactment of the Current Apportionment Plan to assert claims they could have asserted years ago, but chose not to. Plaintiffs should not be permitted to benefit through any purported emergency arising out of their own delay.

E. The Elements for the Issuance of a Writ of Mandamus are Satisfied

As demonstrated by the foregoing, the elements required for issuance of a writ of mandamus are satisfied. There are no other adequate means to seek the relief sought by Petitioners, as denials of stays are not appealable as a final judgment.

Furthermore, only this Court can afford adequate relief. *See* Sup. Ct. R. 20(1) and 20(3)(a). This is so for the following reasons:

First, this case falls within this Court's direct appeal mandatory jurisdiction. 28 U.S.C. § 1253; *see also id.* at § 2101(b). To preserve this jurisdiction, this Court has previously issued stays of proceedings in *Rucho*. *Rucho v. Common Cause*, No. 17-1295, 17A745 (U.S. Jan. 18, 2018) (jurisdiction postponed until hearing on the merits). Because this case also falls under the mandatory jurisdiction of the U.S. Supreme Court, in aid of this jurisdiction, this Court should exercise its mandamus powers to issue a stay.

Accordingly, seeking relief from the Sixth Circuit is inadequate since the outcome of the trial in this case will not be reviewed by the Sixth Circuit but by this Court. Additionally, because appeals of gerrymandering cases go directly to this Court, the Sixth Circuit does not have the authority to establish the parameters of a partisan gerrymandering claim and whether such claims exist. This Court, therefore, is in a unique position to determine if a stay of the trial below is warranted because this Court will decide existence and contours of a partisan gerrymandering claims this term. *Rucho v. Common Cause*, No. 18-422 (U.S. Jan. 4, 2019) (postponing determination of jurisdiction until hearing on the merits). Accordingly, seeking relief from the Sixth Circuit is inadequate.

Second, the U.S. Court of Appeals for the Sixth Circuit, in a different partisan gerrymandering case, but one that presents the same theory of harm as do the Michigan Plaintiffs here, has indicated that the plaintiffs' partisan gerrymandering theory

is viable. *Ohio A. Philip Randolph Inst. v. Larose*, No. 18-425, 2019 U.S. App. LEXIS 1718, *16 (6th Cir. 2019) (stating that the documents and deposition testimony sought from non-parties "supported a crucial element of [plaintiffs'] partisan gerrymandering claim."). Importantly, Judge Nalbandian issued a concurring opinion concerning that the contours of partisan gerrymandering claims had not yet been determined. *Id.* at *20-21 ("The district court provides almost no explanation as to why the documents at issue here meet the "highly relevant" standard necessary to overcome the First Amendment privilege. That's particularly troublesome in the context of this case, where the substantive contours of a partisan gerrymandering claim have yet to be fleshed out to a significant degree."). The fact that a majority of a three-judge panel of the Sixth Circuit indicated that the same theory of harm that Plaintiffs propose below is viable and that the third-judge cited specifically to the lack of guidance from this Court on the "substantive contours" of a partisan gerrymandering claim, demonstrates that relief must be sought here.

Third, trial is less than two weeks away, and there is simply insufficient time to seek relief first at the Sixth Circuit and then this Court before irreparable harm occurs.

Moreover, Petitioners' right to the writ is clear and indisputable and issuance of the writ is otherwise appropriate under the circumstances, as the *Rucho* and *Benisek* cases are scheduled to be considered less than a month after trial in the District Court is scheduled to commence, and those cases are applicable, instructive, and potentially dispositive on the below case, such that issuing the

writ and staying the the case until after this Court decides *Rucho* and *Benisek* best serves the interests of judicial economy and public welfare.

CONCLUSION

Petitioners/Intervenor-Defendants respectfully request that this Court issue the requested writ of Mandamus to the United States District Court for the Eastern District of Michigan, ordering that court to stay trial in the District Court pending this Court's decisions on the dispositive issues in *Common Cause v. Rucho* (Sup. Ct. 18-422) and *Benisek v. Lamone* (Sup. Ct. 18-726).

Respectfully Submitted on this 25th day in January, 2019.

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