

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LEAGUE OF WOMEN VOTERS
OF MICHIGAN, ROGER J. BRDAK,
FREDERICK C. DURHAL, JR.,
JACK E. ELLIS, DONNA E.
FARRIS, WILLIAM "BILL" J.
GRASHA, ROSA L. HOLLIDAY,
DIANA L. KETOLA, JON "JACK"
G. LASALLE, RICHARD "DICK"
W. LONG, LORENZO RIVERA
and RASHIDA H. TLAIB,

Plaintiffs,

v.

JOCELYN BENSON, in her official
Capacity as Michigan Secretary of
State,

Defendant.

Case No. 2:17-cv-14148

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

**THE MICHIGAN SENATE'S AND
THE MICHIGAN SENATORS'
MOTION FOR IMMEDIATE
CONSIDERATION OF MOTION
FOR STAY**

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Nonparties and Proposed Intervenors the Michigan Senate (the “Senate”) and Michigan State Senators Jim Stamas, Ken Horn, and Lana Theis (the “Michigan Senators”), through their attorneys, Dykema Gossett PLLC, hereby move for immediate consideration of their Motion for Stay. This Motion is accompanied by a Brief in Support per LR 7.1(d).

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: January 29, 2019

By: /s/ Jason T. Hanselman
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**THE MICHIGAN SENATE'S AND
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BRIEF IN SUPPORT OF THEIR
MOTION FOR IMMEDIATE
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CONSIDERATION OF MOTION FOR STAY**

In support of their Motion for Immediate Consideration of their Motion for Stay, the Senate and the Michigan Senators, through their attorneys, Dykema Gossett PLLC, state as follows:

1. On December 22, 2017, the League of Women Voters of Michigan and other named individuals (collectively, “Plaintiffs”) filed a two-count Complaint for Declaratory and Injunctive Relief (ECF No. 1) against former Michigan Secretary of State Ruth Johnson in her official capacity, asserting that Michigan’s current congressional and state legislative apportionment plans are unconstitutional pursuant to 42 U.S.C. § 1983, § 1988 and the First and Fourteenth Amendments to the United States Constitution.

2. Former Secretary Johnson vigorously defended the duly enacted congressional and state legislative apportionment plans during her term in office, which ended on December 31, 2018.

3. On January 1, 2019, Secretary of State Jocelyn Benson was sworn into office as former Secretary Johnson’s successor and, under Fed. R. Civ. P. 25(d), was automatically substituted as a party in this case in her official capacity.

4. On January 17, 2019, Secretary Benson filed a Response to Defendants-Intervenors’ Emergency Motion to Stay Trial, in which she agreed that

an adjournment of the imminent trial scheduled for February 5, 2019, would be appropriate under the circumstances of this case and stated that “[a]n adjournment will permit the Secretary of State and Plaintiffs the opportunity to focus their efforts on negotiating a mutually agreeable and complete resolution of their disputes.” (ECF No. 199, PageID.7601.)

5. As this Court acknowledged in its January 29, 2019 Order Granting Plaintiffs’ Motion for Determination of Privilege, “the Secretary does not intend to defend the current apportionment plans at issue in this case.” (ECF No. 216).

6. Because Secretary Benson has declined to defend Michigan’s current duly enacted congressional and state legislative apportionment plans, the Senate’s and the Michigan Senators’ interests, as described in their respective Motions to Intervene and Briefs in Support, and in their joint Motion for Stay and Brief in Support, are no longer being vigorously defended.

7. This Court’s August 14, 2018 Order denying intervention by members of the Michigan House of Representatives (the “House Intervenors”) dissuaded the Senate and the Michigan Senators from intervening earlier because it concluded that the “Applicants’ motion [to intervene] is premature. Although Applicants speculate about the ‘possibility’ that the executive branch will end its participation in this matter, [R. 70 at PageID #1221], Applicants’ argument presupposes events that have not yet come to pass, including but not limited to the executive branch

ending its participation in this case and the legislative branch voting to fill the adversarial void. Assuming, without deciding, that there are circumstances in which the legislative branch may permissibly represent the state's interests in court, Applicants' current motion is premature." (ECF No. 91, PageID.2061-62.)

8. The possibility that the executive branch would end its participation and vigorous defense in this case has now come to pass, and the Senate's and the Michigan Senators' interests are not being adequately represented.

9. Through their Motion for Stay and Brief in Support, the Senate and the Michigan Senators respectfully request that this Court stay the trial scheduled to begin on February 5, 2019, and any other proceedings in this case, pending a ruling by the Court on the Senate's and Michigan Senators' respective Motions to Intervene.

10. Immediate consideration of the Senate's and the Michigan Senators' Motion for Stay is requested because the trial date is one week away and time is of the essence. If this Court does not stay proceedings pending a ruling on the Motions to Intervene, or in the alternative rule on the Motions to Intervene, the Senate and Michigan Senators will be irreparably harmed because they will be excluded from participation in the trial and will be unable to defend their unique interests in the case.

WHEREFORE, for the foregoing reasons, the Senate and the Michigan Senators respectfully request that this Court grant their Motion for Immediate Consideration of their Motion for Stay.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: January 29, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2019, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record. I hereby certify that I have mailed by United States Postal Service the same to any non-ECF participants.

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