

No. 18A _____

In the Supreme Court of the United States

LARRY HOUSEHOLDER, SPEAKER OF THE OHIO HOUSE OF
REPRESENTATIVES, LARRY OBHOF, PRESIDENT OF THE
OHIO SENATE, AND FRANK LAROSE, OHIO SECRETARY OF
STATE, IN THEIR OFFICIAL CAPACITIES,

Applicants,

v.

OHIO A. PHILIP RANDOLPH INSTITUTE, *ET AL.*,
Respondents.

*ON APPLICATION FOR STAY FROM
THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF OHIO*

**APPLICATION FOR AN EXTENSION OF TIME IN WHICH
TO FILE A JURISDICTIONAL STATEMENT**

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TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 18.3, 22, and 30, Speaker Larry Householder, President Larry Obhof, and Secretary of State Frank LaRose (collectively, “Ohio” or the “State”), respectfully seek an extension of time, until Friday, July 19, 2019, in which to file a jurisdictional statement in the appeal from *Householder, et al. v. A. Philip Randolph Inst., et al.*, No. 1:18-cv-357 (S.D. Ohio).

1. The court below issued its judgment on May 3, 2019. *See* Appendix B. Its accompanying opinion and order, issued the same day, held that all sixteen of Ohio’s congressional districts are unconstitutional partisan gerrymanders. *See* Appendix A. The State filed its notice of appeal on May 6, 2019. Under the Supreme Court’s rules, the jurisdictional statement would be due sixty days later, on July 5, 2019. *See* S. Ct. Rule 18.3.

2. Back in July of 2018, the parties in this case submitted in the District Court a jointly proposed schedule for conducting the trial—one that would “allow[] for a trial date of March 4, 2019.” *See* R.39, PageID#346. In that schedule, the State agreed that it would file its notice of appeal within seven days of any judgment, and that it would file its jurisdictional statement within fifty-three days of its notice of appeal. *Id.* PageID#348. To comply with that agreement, Ohio will have to file in this Court no later than June 28—potentially before the end of this Court’s term.

At the time of the agreement, the Court had no cases regarding partisan-gerrymandering claims pending before it. The Court had just decided *Gill v. Whit-*

ford, 138 S. Ct. 1916 (2018) and *Benisek v. Lamone*, 138 S. Ct. 1942 (2018), and vacated and remanded another case “for further consideration in light of *Gill*.” See *Rucho v. Common Cause*, 138 S. Ct. 2679 (2018). But months later, in January 2019, the Court agreed to hear argument in *Rucho v. Common Cause*, 18-422 and *Lamone v. Benisek*, 18-726—two partisan-gerrymandering cases that might dictate the outcome in this case. Ohio thus sought to stay the trial pending resolution of those cases, but the District Court denied its request.

The District Court issued its opinion and order on May 3, 2019. Given the fifty-three-day agreed-upon timeline for filing a jurisdictional statement, and in light of the fact that this Court is unlikely to resolve *Rucho* or *Lamone* before late June, the date of the District Court’s opinion and order all but assures that Ohio will have to draft its jurisdictional statement without the benefit of this Court’s guidance in *Rucho* and *Lamone*.

3. If Ohio does not know the holdings of *Rucho* and *Lamone*, its ability to file a helpful jurisdictional statement will be significantly limited; parties cannot brief the law until they know what it is, and those cases are likely to say what the relevant law is. What is more, the Ohio Attorney General’s office has several major cases with briefing deadlines and oral arguments on or around June 28. See, e.g., *Henness v. DeWine*, No. 19-3064 (6th Cir.) (Ohio’s response brief in challenge to lethal-injection protocol due June 28); *Schmitt v. LaRose*, No. 19-3196 (6th Cir.) (June 26 oral argument in expedited appeal concerning a constitutional challenge to Ohio law governing process for placing voter initiatives on the ballot); *Smith v. Cook*, No.

17-4118 (June 26 oral argument in habeas case). That is why Ohio is seeking an extension of time.

Counsel for the appellees has informed the State that the appellees oppose an extension of time. Counsel has expressed that the jointly proposed schedule resulted from good-faith negotiations, and that any extension of time risks delaying the resolution of this case past September 20, 2019—the deadline for finalizing a new map before the 2020 election. Ohio respects the appellees' concern, but nonetheless moves for an extension of time. While it is true the agreed-upon schedule resulted from good-faith negotiations, intervening events—in particular, the date of the District Court's decision, which will likely make it impossible to draft the jurisdictional statement with the benefit of *Ruchos* and *Lamone*—fundamentally altered the deal. As for the September 20, 2019 deadline, the granting or withholding of an extension will not change whether this Court decides the case before that date. If the Court summarily disposes of the case immediately after *Ruchos* and *Lamone*, then the case will be back in the District Court before September 20. If not, then the case is almost certain to be before this Court until *at least* October 1, when this Court will hold its long conference. The reason for the delay is the fact that this Court's last conference of this Term is scheduled for June 20, before Ohio's jurisdictional statement is due even under the agreed-upon schedule.

As the foregoing illustrates, an extension to July 19, 2019, will not prejudice anyone.

4. In the alternative, if appellees are willing, the State has no objection to treating its stay-stage filings as satisfying the jurisdictional-statement requirement of Rule 18. If this Court were to treat the stay-stage filings as satisfying that Rule's requirements, it would moot the extension request and help ensure the speedy resolution that appellees seek.

* * *

In sum, Ohio requests that the Court extend the time in which to file a jurisdictional statement until July 19, 2019.

Respectfully submitted,

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