

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

O. JOHN BENISEK, *et al.*,

Plaintiffs,

v.

LINDA H. LAMONE., *et al.*,

Defendants.

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Case No. 13-cv-3233

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CONSENT MOTION TO STAY

Defendants Linda H. Lamone and David J. McManus, Jr., respectfully move for a stay of the Court's November 7, 2018, final judgment (Dkt. 223) during the pendency of their appeal to the Supreme Court. Plaintiffs have authorized defendants to state that they conditionally consent to the relief requested in this motion and will file a separate statement respecting the motion.

A stay of this matter pending the defendants' appeal to the Supreme Court is warranted to avoid potentially contradictory results or needless expenditure of public resources. This Court's opinions and order set forth two different theories of First Amendment retaliation claims applied to the issue of partisan gerrymandering, one involving a vote dilution injury and one involving an injury to representational rights. This Court's opinion adds potentially two new justiciable claims for partisan gerrymandering to the multiple claims recognized in *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 799 (M.D.N.C. 2018). The North Carolina defendants have appealed, *Robert A. Rucho, et al.*

v. Common Cause, et al., No. 18-422 (October 1, 2018). The Supreme Court is therefore poised to address the issue of partisan gerrymandering once again this term. Any further guidance from the Supreme Court will be important to ensure that, even if this Court's order is affirmed, state lawmakers do not redraw Maryland's electoral map for 2020 using a standard that is not the one ultimately adopted by the Supreme Court. Moreover, this Court's order may be reversed, either because the Supreme Court finds partisan gerrymandering to be nonjusticiable or because the Supreme Court approves a different test for partisan gerrymandering claims, which Maryland's map may or may not satisfy. As this Court's order is currently structured, the State must submit a map prior to the end of the current Supreme Court term. Proceeding in parallel with the pending appeal could require duplicate efforts or result in the waste of public resources if the 2011 map is ultimately upheld.

In support of this motion, the defendants make the following representations:

1. Defendants recognize that, if the Supreme Court affirms this Court's final judgment, there must be adequate time to draft and implement a new congressional map for use in Maryland's 2020 congressional elections. To meet that goal, the State Board of Elections must have a final, court-approved map completed and in-hand by or before October 18, 2019. It is not necessary to have a map completed before that date.

2. The Supreme Court's current term is scheduled to conclude on June 24, 2019. If the Supreme Court affirms this Court's final judgment on or before that date, defendants

represent that there will be adequate time to draft and implement a new congressional map by or before October 18, 2019, in time for use in Maryland's 2020 congressional elections.

3. To ensure that the Supreme Court is able to consider defendants' appeal on the merits this term, defendants agree to file their notice of appeal and jurisdictional statement by December 3, 2018. Counsel for plaintiffs have represented that they will file their motion to affirm by December 11, 2018. Defendants will file their reply on December 18, 2018, together with a letter pursuant to Supreme Court Rule 18.7 waiving the 14-day waiting period.

4. If the Supreme Court affirms this Court's final judgment, upon issuance of the Supreme Court's decision, defendants agree to begin immediately drafting a new map and simultaneously to negotiate in good faith with plaintiffs to reach a mutually agreed revised schedule for arriving at a new map, in the same form as the procedure established by the Court's final judgment. Defendants commit that in no event will plaintiffs have fewer than 15 days for the filing of their objections to the defendants' proposed plan, if any. Defendants also commit that there will be no fewer than 60 days for the Court-established Congressional District Commission to develop its own plan, if that becomes necessary.

A proposed order is attached.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Sarah W. Rice

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