

IN THE SUPREME COURT OF THE UNITED STATES

No. _____

MICHIGAN SENATE ET AL., APPLICANTS

v.

LEAGUE OF WOMEN VOTERS OF MICHIGAN, ET AL.

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A JURISDICTIONAL STATEMENT
ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN

To the Honorable Sonia Sotomayor
Associate Justice of the United States Supreme Court
and Circuit Justice for the Sixth Circuit

Pursuant to Rule 18.3 of this Court, counsel for applicants, the Michigan Senate and Michigan Senators ("Michigan Senate Intervenors"), respectfully requests a 45-day extension of time, to and including August 15, 2019, within which to file a jurisdictional statement in the appeal from League of Women Voters of Michigan et al. v. Benson, No. 2:17-cv-14148. The United States District Court for the Eastern District of Michigan entered judgment on April 25, 2019. App. A, infra, 1. The Michigan Senate Intervenors timely filed a notice of appeal on April 30, 2019. App. B, infra, 1-3. Unless extended, the time for filing a jurisdictional statement will expire on July 1, 2019. This Court has jurisdiction under 28 U.S.C. § 1253.

1. This case presents many of the same issues that this Court currently is considering in Rucho v. Common Cause, No. 18-422, and Lamone v. Benisek, No. 18-726, including the requirements to establish standing to assert partisan gerrymandering claims; whether such claims are justiciable; and, if so, what standards govern such claims.

In August 2011, the Governor of Michigan signed into law Michigan's current apportionment plan, consisting of 14 Congressional, 38 State Senate, and 110 State House districts. In December 2017—over six years and three election cycles after enactment of the plan—various plaintiffs sued to enjoin the plan as an unconstitutional partisan gerrymander.¹ Specifically, the plaintiffs claimed that the current apportionment plan (1) discriminates against them as Democratic voters in violation of the Equal Protection Clause, and (2) burdens their First Amendment rights of free speech and association. App. C, infra, 1, 27, 51.

The plaintiffs initially named Secretary of State Ruth Johnson as the defendant in this action. In November 2018, Democratic Party candidate Jocelyn Benson was elected as the new Secretary of State. Secretary Benson was then substituted as the

¹ The plaintiffs are 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.

defendant in this action. Thereafter, Secretary Benson entered negotiations with the plaintiffs, resulting in the filing of a motion for approval of a joint consent decree. Dist. Ct. Dkt. No. 211. Secretary Benson also told the District Court she would not defend the current apportionment plan. Dist. Ct. Dkt. No. 216.

To fill the adversarial void left by the Secretary's changed position, the Michigan Senate Intervenors moved to intervene. The District Court granted this motion and denied the motion to approve the joint consent decree. Dist. Ct. Dkt. Nos. 235, 237.

In January 2019, this Court announced that it would hear the appeals in Rucho, No. 18-422, and Benisek, No. 18-726. The Michigan Senate Intervenors thus moved to stay the district-court proceedings. The court denied the motion, and the case proceeded to a bench trial in February 2019. Dist. Ct. Dkt. No. 238.

On April 25, 2019, the District Court issued a written order that invalidated Michigan's state legislative and congressional maps as purported unconstitutional partisan gerrymanders. App. C, infra, 1-146. Regarding justiciability, the District Court reasoned that Davis v. Bandemer, 478 U.S. 109 (1986), held that "partisan gerrymandering claims are justiciable." App. C, infra, 56.

Relying on Common Cause v. Rucho, 318 F. Supp. 3d 777, 800 (M.D.N.C. 2018), and other district court opinions, the District Court below fashioned a test for assessing partisan gerrymandering

claims under the Fourteenth Amendment. App. C, infra, 58. Under that test, a challenger need only establish that the map-drawer acted with "discriminatory intent" and that its plan had "discriminatory effects"; the burden then shifts to the defendant to show "that a legitimate state interest or other neutral factor justified such discrimination." App. C, infra, 58-59. With respect to the First Amendment, the District Court adopted a "similar three-part test" under which a challenger need only show discriminatory intent, discriminatory effects, and causation. App. C, infra, 59.

Turning to standing, the District Court held that the plaintiffs established standing to assert vote dilution claims under the Fourteenth Amendment with respect to almost all of the challenged districts. App. C, infra, 62-97. The District Court relied on social-science metrics that purportedly show statewide partisan bias, as well as alternative, computer-drawn maps created by a college professor to show what might happen in a politics-free world. App. C, infra, 94. The District Court further held that the plaintiffs had standing to assert First Amendment claims with respect to every challenged district, because the plaintiffs purportedly were less excited about voting or less engaged in the political process. App. C, infra, 99-103.

Turning to the merits, the District Court found that (1) almost all of the challenged districts violated the Fourteenth

Amendment by diluting the votes of Democratic voters; and (2) every challenged district violated the plaintiffs' First Amendment rights by "engendering voter apathy." App. C, infra, 104-136.

The District Court enjoined the use of the challenged districts in any future election and ordered the Michigan legislature to enact a new plan by August 1, 2019—i.e., within three months. App. C, infra, 144. Further, the court ordered a special State Senate election in 2020—effectively halving Senators' four-year terms. App. C, infra, 136-143.

On April 30, 2019, the Michigan Senate Intervenors filed a notice of appeal to this Court pursuant to 28 U.S.C. § 1253. On May 3, 2019, the Michigan Senate Intervenors moved the District Court to stay the judgment pending appeal. The District Court denied the motion. Dist. Ct. Dkt. 277.

On May 10, 2019, the Michigan Senate Intervenors filed an emergency stay application with this Court. The Court granted a stay on May 24, 2019.

2. Counsel for the Michigan Senate Intervenors respectfully requests a 45-day extension of time, to and including August 15, 2019, within which to file a jurisdictional statement. Good cause exists to grant this extension in order to allow counsel sufficient time to analyze and address the impact of this Court's forthcoming rulings in Rucho, No. 18-422, and Benisek, No. 18-726. In those cases, the Court is poised to address the same fundamental issues

presented by this appeal, including the requirements for establishing standing to assert partisan gerrymandering claims, whether such claims are justiciable, and, if so, the legal standards governing such claims. The Court is expected to issue its rulings in those cases by the end of the term in late June. Absent an extension, however, the jurisdictional statement in this case will be due shortly thereafter on July 1, 2019. A 45-day extension is warranted to give counsel sufficient time to analyze the effects of those forthcoming decisions and to prepare a jurisdictional statement accordingly.

The requested extension will not prejudice plaintiffs. The District Court's order already is stayed pending the filing and disposition of an appeal or until further order of this Court. In granting the stay, the Court rejected plaintiffs' argument that any delay in the creation and implementation of new district maps would irreparably harm plaintiffs. Additionally, the requested extension will not significantly delay the Court's consideration of this appeal. Even absent an extension, this Court will not likely consider whether to review this appeal until October 1, 2019, because jurisdictional briefing is currently due after the scheduled close of the current Term. With a 45-day extension, briefing related to the jurisdictional statement likely would be distributed to the Court on September 30, 2019, for consideration

at the conference on October 18, 2019. That modest delay would not cause any prejudice, especially given the stay.

Further, the undersigned counsel did not represent any party in the proceedings below. A 45-day extension would allow recently retained counsel sufficient time to fully research the constitutional issues presented, review the factual record, and prepare the jurisdictional statement for filing.

In addition, the undersigned counsel currently is preparing a reply brief in Romag Fasteners, Inc. v. Fossil, Inc., No. 18-1233, which is due in this Court on June 4; a cert petition to be filed in this Court in mid-June; and other filings, both in this Court and in other courts, with proximate due dates. Further, the undersigned counsel is one of the counsel representing Google in Google LLC v. Oracle America, Inc., a case in which this Court has called for the views of the Solicitor General. Additional time is therefore needed to prepare and print the jurisdictional statement in this case.

Respectfully submitted,

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