
In the
Supreme Court of the United States

LARRY HOUSEHOLDER ET AL.,

Applicants,

v.

OHIO A. PHILIP RANDOLPH INSTITUTE ET AL.,

Respondents.

RESPONDENTS' OPPOSITION TO APPLICATION FOR EXTENSION

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

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The Ohio A. Philip Randolph Institute *et al.* (the “Plaintiffs”) submit this brief in opposition to the application for an extension of time in which to file a jurisdictional statement from Speaker Larry Householder *et al.* (the “State” or “Applicants”). After first seeking to delay proceedings through a stay application, Applicants seek to further forestall the effectuation of the three-judge panel’s (the “Panel”) unanimous judgment by now seeking an extension of time to file their jurisdictional statement. Applicants seek this extension despite their representation to the Panel that they would not seek any extension and would in fact file an expedited appeal in exchange for their preferred later trial date. Having been granted the later trial date, Applicants now contend that since this Court is expected to issue decisions in *Rucho v. Common Cause*, No. 18-422, and *Lamone v. Benisek*, No. 18-726, they should not be held to their earlier representation. Doing so would cause irreparable harm to Plaintiffs. Given the likelihood of irreparable harm to Plaintiffs if this case is further delayed and the lack of harm to Applicants if the case is kept on its agreed-upon track, Plaintiffs respectfully accede to Applicants’ pending request that this Court treat the Applicants’ stay petition as satisfying the jurisdictional-statement requirement of Rule 18.

Plaintiffs filed their complaint in May 2018. R.1. From the outset, the parties and the Panel recognized that expedition was necessary to ensure that, if a constitutional violation were found, there would be sufficient time to remedy it before the 2020 election. *See, e.g.*, R.35, R.39. The parties therefore submitted to the Court their joint report pursuant to Federal Rule of Civil Procedure 26(f) on

July 6, 2018, setting forth agreed-upon deadlines for the litigation. R.35. Under the Panel’s direction and through further agreement by the parties, the proposed schedule was revised, R.39, and the revised deadlines were ordered by the Panel. R.41. In concluding the lengthy process of negotiating these deadlines for the case, Applicants specifically agreed that “in the event they decide to appeal this Court’s decision, rather than in the time provided by Fed. R. App. P. 4(a)(1) and Supreme Court Rule 18, they will file the Notice of Appeal within one week of the order of this Court, and will file their jurisdictional statement within 53 days of their Notice of Appeal.” R.39.

At the time of the agreement, all of the parties were acutely aware that this Court would likely hear another gerrymandering case this Term. As Applicants acknowledged in their stay application, this Court has mandatory jurisdiction in partisan gerrymandering cases decided by three judge panels under 28 U.S.C. § 1253. *See* Emergency Appl. For Stay (“Stay Appl.”) at 12, *Householder v. Ohio A. Philip Randolph Inst.*, No. 18A1165 (May 10, 2019) (citing 28 U.S.C. § 1253 for the proposition that the Court has mandatory jurisdiction in this matter). On June 18, 2018, this Court had entered its judgment in *Gill v. Whitford*, 138 S. Ct. 1916 (2018). The day this Court issued its decision in *Gill*, the Court affirmed the district court’s denial of a preliminary injunction in *Benisek*. *Benisek v. Lamone*, 138 S.Ct. 1942, 1945 (2018). As a result, *Benisek* would proceed in the district court to final judgment. On June 25, 2018, the Court vacated and remanded *Rucho* for further consideration in light of *Gill*. *Rucho v. Common Cause*, 138 S. Ct. 2679 (2018).

Given this Court's mandatory jurisdiction, it was thus entirely predictable last July, when the schedule in this case was established, that *Benisek* and *Rucho* would be decided and taken up by the Court this Term.

The timing of the unanimous decision by the three-judge panel in this case was also predictable. The trial date was set for March 4, 2019, with the full knowledge of that the case was on an expedited schedule. R.39. The parties understood that the Panel likely would issue a decision before the end of the Term. The parties therefore reached a good faith agreement that Applicants would file their jurisdictional statement within 53 days of the decision, understanding that the agreement would likely require them to file an appeal prior to the end of the Term.

The Applicants will not suffer injury if required to adhere to the current schedule. They have already requested that their application for a stay serve as a jurisdictional statement. Br. at 4 (requesting conversion of the stay application); Reply in Supp. of Emergency Appl. for Stay at 2, *Householder*, No. 18A1165 (May 21, 2019) ("The State is happy to mollify the respondents' concerns: it hereby moves the Court to treat the stay-stage briefing as satisfying the requirement for a jurisdictional statement."); *see also* Stay Appl. at 1. Because this Court has mandatory jurisdiction over three-judge redistricting cases, there is little in the pending cases that could change this Court's calculus about whether or not jurisdiction is appropriate here.

Plaintiffs agree with Applicants that this Court should treat the application for stay as the jurisdictional statement under Rule 18. Doing so would avoid

further delay in this case and avoid irreparable harm to Plaintiffs. While the State has claimed that September 20, 2019 is the critical date for the adoption of a districting map, Appendix (“App.”) at 294, *Householder*, No. 18A1165 (May 10, 2019). Ohio law and experience place that date in December, 2019. *See* Ohio Rev. Code §§ 3501.01(E)(2); 3513.05; App. at 294 (noting that former Governor Kasich signed the challenged plan that was used in the 2012 elections into law on December 15, 2011). But regardless of which party is correct about the critical date, to convert the stay application to a jurisdictional statement will help to ensure a timely disposition of Plaintiffs claims, as well as an earlier date for finality of Ohio’s congressional map. This Court has followed a similar approach in other cases. *See, e.g., Perry v. Perez*, 132 S. Ct. 842 (2001) (holding that “the application for stay is treated as jurisdictional statement, and in each case probable jurisdiction is noted”); *cf. Clinton v. Glavin*, 119 S. Ct. 290 (1998) (granting a “motion to expedite consideration of the jurisdictional statement and to set an expedited briefing schedule”). Should the Court take that course, the request for an extension would be moot.

CONCLUSION

The Court should deny Applicants’ request for an extension of time to file their jurisdictional statement and grant Applicants’ request to convert the stay motion into a probable jurisdictional statement under Rule 18.

Respectfully submitted,

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