

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. John Benisek, et al.

Plaintiffs,

vs.

Linda H. Lamone, et al.,

Defendants.

Case No. 13-cv-3233

Three-Judge Court

JOINT STATUS REPORT

Pursuant to this Court's August 24, 2017 Order Entering Stay (Dkt. 204), the parties have met and conferred regarding further proceedings in this case. The parties' positions are set forth below.

I. SUPPLEMENTAL BRIEFS ON SUMMARY JUDGMENT

The plaintiffs have filed a motion for summary judgment, and the State has filed a cross-motion for summary judgment. The motions are fully briefed and ripe for decision (Dkts. 177, 186, 191, 201), and the plaintiffs will not move to reopen discovery.

The parties agree that supplemental summary judgment briefs are warranted to allow the parties to address *Gill v. Whitford*, 138 S. Ct. 1916 (2018), the Supreme Court's disposition of the appeal in this case, and other subsequent relevant authority.

The parties agree to file simultaneous supplemental summary judgment briefs of 25 pages or less by or before **noon on Friday, July 13, 2018**.

II. PLAINTIFFS' POSITION REGARDING A TRIAL DATE

Plaintiffs respectfully submit that a trial date should be set at the earliest dates on which the judges of this Court are able to find overlapping time on their schedules, and in no event later than October 2018. This is so to ensure that plaintiffs' claims are not mooted

by the passage of the 2020 elections.

To ensure that we are able to obtain a new congressional map in time for the 2020 elections if the Court enters a permanent injunction, there must be time for the Supreme Court to complete its appellate review of this Court's final judgment by January 2020 or earlier.¹ Working backward from there, the parties' jurisdictional briefs would have to be considered by the Supreme Court at one of its conferences in early April 2019 or before. Assuming that the parties complete their jurisdictional briefing over a significantly shortened 60-day period,² this Court would have to enter a final judgment in early January 2019—just five months from now.³ We are concerned that waiting to set a trial date until after a decision on the summary judgment motions would make meeting that timeline substantially more difficult.

We therefore respectfully submit that, to ensure that the Court has adequate time to issue a final judgment while leaving time for appellate review and an orderly enactment of a new map, a trial on the earliest possible dates—and in no event later than October 2018—is necessary. We anticipate needing two or three days for trial if the Court grants partial summary judgment on the issue of intent; and otherwise, three or four days.

¹ If this Court were to enter a permanent injunction in favor of the plaintiffs, we anticipate that the State would move the Supreme Court for a stay of the injunction. Although we would oppose such relief, there is a significant possibility that the Supreme Court would enter a stay, as it did in *Gill* and the North Carolina case, *Common Cause v. Rucho*, No. 17-1295.

² Supreme Court rules allow for 90 days for the appellants' jurisdictional brief, 30 days for the appellees' response, and between 14 and 20 days for a reply brief depending on the Court's case distribution schedule—for an ordinary total of 134-140 days for jurisdictional briefing assuming no extensions.

³ We do not mean to suggest that absent a final judgment from this Court by January 2019, plaintiffs' claims will necessarily be mooted. Our point is only that a final judgment by or before January 2019 is necessary to ensure an orderly conclusion to this litigation and to avoid an inequitable risk that plaintiffs' claim is mooted by passage of time.

III. DEFENDANTS' POSITION REGARDING A TRIAL DATE

Defendants continue to believe that this matter is appropriate for resolution on summary judgment. Defendants therefore believe that it is premature to set trial preparation or trial dates. To the extent any possibility of mootness now threatens plaintiffs' claims, it is due to their own litigation conduct including decisions about when to file and when to seek preliminary injunction. As plaintiffs set forth above, significant questions regarding scheduling, such as how many days should be set aside for trial, may be substantially clarified through resolution of the cross-motions for summary judgment. Indeed, the case may not even proceed to trial at all. However, Defendants do not object to the setting of a trial date and appropriate pre-trial deadlines as soon as practicable after the resolution of the pending and contemplated dispositive motions and anticipate working cooperatively with Plaintiffs' counsel to set an expeditious schedule at the appropriate time.⁴

For the plaintiffs

/s/ Michael B. Kimberly

Michael B. Kimberly, Bar No. 19086
mkimberly@mayerbrown.com
Paul W. Hughes, Bar No. 28967
phughes@mayerbrown.com
Stephen M. Medlock, *pro hac vice*
smedlock@mayerbrown.com
E. Brantley Webb, *pro hac vice*
bwebb@mayerbrown.com
Micah D. Stein, *pro hac vice*
mstein@mayerbrown.com
Mayer Brown LLP
1999 K Street NW
Washington, D.C. 20006
(202) 263-3000 (office)
(202) 263-3300 (facsimile)

For the defendants

/s/ Jennifer L. Katz

(signed by Michael B. Kimberly
with permission of Jennifer L. Katz)
Jennifer L. Katz, Bar No. 28973
jkatz@oag.state.md.us
Sarah W. Rice, Bar No. 29113
srice@oag.state.md.us
Andrea W. Trento, Bar No. 28816
atrento@oag.state.md.us
Assistant Attorneys General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-7005 (office)
(410) 576-6955 (facsimile)

⁴ Due to pre-planned family vacations, Defendants' counsel are not available during the weeks beginning August 20 and August 27.