

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

WILLIAM WHITFORD, et al.

Plaintiffs,

v.

Case No. 3:15-CV-00421-jdp

BEVERLY R. GILL, et al.,

Defendants;

and

THE WISCONSIN STATE ASSEMBLY,

Intervenor-Defendant.

THE WISCONSIN ASSEMBLY DEMOCRATIC
CAMPAIGN COMMITTEE,

Plaintiff,

v.

Case No. 3:18-CV-00763-jdp

BEVERLY R. GILL, et al.,

Defendants;

and

THE WISCONSIN STATE ASSEMBLY,

Intervenor-Defendant.

**THE WISCONSIN STATE ASSEMBLY'S BRIEF
IN SUPPORT OF ITS EMERGENCY MOTION TO STAY**

The Wisconsin State Assembly moves for an immediate stay of these cases pending the Supreme Court's disposition of *Rucho v. Common Cause* and *Lamone v. Benisek*, both of which the Supreme Court has set for argument in March. *See* Order List, 586 U.S. at _ (Jan. 4, 2019) (attached as Exhibit A). The appeals in *Common Cause* and *Benisek* present issues identical to those before this Court, including whether and when plaintiffs have standing to bring partisan gerrymandering claims, whether such claims are justiciable, and whether plaintiffs can challenge legislative maps as violating their First Amendment right to association. The Supreme Court's resolution of these issues is likely to significantly affect the law applicable to the *Whitford* and *ADCC* cases. Proceeding before the Supreme Court issues its decisions would be an unnecessary waste of the Court's and the parties' time and resources.

This Court has discretion to stay its proceedings in the interest of judicial economy. *Landis v. North American Co.*, 299 U.S. 248, 254 (1936) (recognizing "the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."); *see also Texas Ind. Producers & Royalty Owners Ass'n v. E.P.A.*, 410 F.3d 964, 980 (7th Cir. 2005) ("A stay pending the outcome of litigation in another court . . . involving the same or controlling issues is an acceptable means of avoiding unnecessary duplication of judicial machinery." (cleaned up)).

Here, judicial economy strongly counsels in favor of a stay because allowing these cases to proceed poses a substantial risk of wasting the Court and the parties' time and effort. There is significant overlap between the issues in *Common Cause* and *Benisek* and those before this Court. Both *Common Cause* and *Benisek* involve partisan gerrymandering claims grounded in the First and Fourteenth Amendments. See *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 799 (M.D.N.C. 2018); *Benisek v. Lamone*, 266 F. Supp. 3d 799, 814 (D. Md. 2017). In fact, other courts have already recognized the overlap between *Whitford*, *Common Cause*, and *Benisek*. The Supreme Court vacated the original decision in *Common Cause* for reconsideration in light of its decision in *Whitford*. *Rucho v. Common Cause*, 138 S. Ct. 2679 (2018) (mem). And the district court in *Benisek* recognized the similarities between that case and *Whitford*: "Fundamentally, these cases are two sides of the same coin: both propose a standard by which federal courts might adjudicate claims of unlawful political gerrymandering. Both cases invoke the First Amendment as a source of constitutional authority." *Benisek*, 266 F. Supp. 3d at 814.

The issues currently on appeal before the Supreme Court also overlap with those before this Court. Among the questions presented in *Common Cause* are whether the plaintiffs there have standing and whether the plaintiffs' partisan gerrymandering claims are justiciable. *Rucho v. Common Cause*, Appellants' Jurisdictional Statement at i (Oct. 1, 2018) (attached as Exhibit B). Similarly, a central issue on appeal in *Benisek* is whether the

district court articulated a valid test for whether a legislative map violates plaintiffs' First Amendment associational rights. *Lamone v. Benisek*, Appellants' Jurisdictional Statement, at 16–18 (December 2018) (attached as Exhibit C). All three of those questions bear directly on the issues to be tried in *Whitford* and *ADCC*.

Given the overlap between the issues at stake, whatever the Supreme Court decides in *Common Cause* and *Benisek* will have significant implications for the *Whitford* and *ADCC* cases. One possibility is that the Supreme Court will hold that partisan gerrymandering cases are nonjusticiable, which would obviate the need for any further proceedings here. Another possibility is that the Court will articulate the legal standards governing such claims, which would materially narrow the issues and streamline the preparation of *Whitford* and *ADCC* for trial.

Conversely, if the *Whitford* and *ADCC* cases proceed to trial while *Common Cause* and *Benisek* remain pending, it is likely that the Supreme Court will vacate any decision of this Court for reconsideration in light of its disposition of those cases, potentially requiring a third trial of *Whitford*. See, e.g., *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 314 (2013) (vacating decision below and observing that “fairness to the litigants and the courts” requires that a case “be considered and judged” under the correct legal standard). A stay would ensure that if another trial in this matter is

necessary, there will only be one more, under the proper legal standard, and it will occur before a third trial would have occurred absent a stay.

In one week, the parties are set to begin a series of more than forty fact and expert witness depositions. Further, the Assembly's reply in support of its motion to dismiss is due on Friday.¹ Additional expert reports are due later this month and in early February. All of these events will be affected by *Common Cause* and *Benisek*. It would be highly prejudicial to the Assembly to have to prepare legal briefing, sponsor expert reports, and take depositions without the benefit of the Supreme Court's imminent clarification of the governing legal rules. Accordingly, the Assembly respectfully requests that the Court grant this motion and stay these proceedings as soon as possible.

For the foregoing reasons, the Wisconsin State Assembly respectfully requests that the Court immediately stay all further proceedings in *Whitford* and *ADCC* pending the Supreme Court's disposition of *Common Cause* and *Benisek*.

¹ The Assembly plans to file a separate motion to postpone the deadline for its reply brief until the Court has had an opportunity to rule on this motion to stay.

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