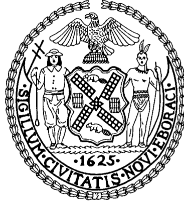

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

AIMEE K. LULICH
Senior Counsel
alulich@law.nyc.gov

October 6, 2022

BY ECF
Honorable Brian M. Cogan
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Phyllis Coachman, et. al. v. City of New York, et. al., 22-CV-5123 (BMC)

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Your Honor:

I am an attorney in the office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for defendant City of New York ("City") in the above-entitled action. Pursuant to Your Honor's Individual Rules of Practice, I write to respectfully request a pre-motion conference regarding defendant City's anticipated motion to stay the instant matter pending decision of the New York State Appellate Division, Second Department, in Fossella, et. al. v. City of New York, et. al., because this matter is moot unless and until the Appellate Division reverses the decision of the Richmond County Supreme Court in Fossella.[1]

Plaintiffs challenge Local Law 11 of 2022 by which the City permitted certain individuals who are lawfully in the United States, but not U.S. citizens, to vote in municipal elections for City officials. Local Law 11 was challenged under the New York State Constitution, Election Law, and Municipal Home Rule Law in an action filed in Richmond County Supreme Court entitled Fossella v. City of N.Y., et. al., Index No. 85007/2022. Local Law 11 was "declared null and void" by the Hon. Ralph Porzio, J.S.C., in the Fossella matter. See Decision & Order, annexed hereto as Exhibit "A."

Plaintiffs also filed an action, similar to the instant matter, in Richmond County Supreme Court, with Index No. 150200/2022, alleging a violation of their 15th Amendment

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[1] For the same reasons discussed herein, the City respectfully requests that the Court stay the City's deadline to Answer, which is currently October 11, 2022, while the instant motion to stay is pending.

rights. See Decision & Order of Hon. Ralph Porzio dated August 9, 2022, annexed hereto as Exhibit "B." The Richmond County Coachman action was dismissed without prejudice on or about August 9, 2022. Id. Here, plaintiffs claim that Local Law 11 violates the 15th Amendment and the Voting Rights Act[2] by allegedly "shifting the electoral power in New York City municipal elections along racial lines to Hispanic and Asian voters and reducing the power of other racial groups, including those of Plaintiffs." Complaint at ⁋ 33. Plaintiffs seek declaratory and injunctive relief, and compensatory damages. Id. at Wherefore clause.

Due to the decision in Fossella, the City is currently enjoined from implementing Local Law 11, including an injunction prohibiting the registration of non-U.S. citizens to vote. Ex. "A" at pp. 1 & 13. No voters were registered pursuant to the law. The City has filed a Notice of Appeal of the Decision, but the injunction remains in effect pending the appeal. Accordingly, Local Law 11 has not had any impact on voting in the City, because it was enjoined before it was implemented. Thus, plaintiffs have not suffered any "injury in fact" that could be "redressed by a favorable decision" and they lack standing. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). Further, unless the Appellate Division grants the City's appeal and lifts the injunction, this matter is moot because the Fossella decision made it "impossible for a court to grant any effectual relief whatsoever to the prevailing party." Knox v. Serv. Emps. Int'l Union, Local 1000, 567 U.S. 298, 307 (2012). However, defendant City acknowledges that the pending appeal may make a motion to dismiss on mootness grounds premature. A stay pending a decision in Fossella will obviate the need to expend time and resources on unnecessary motion practice or discovery.

A district court's "power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its docket with economy of time and effort for itself, for counsel, and for litigants." Louis Vuitton Malletier S.A. v. LY USA, Inc., 676 F.3d 83, 96 (2d Cir. 2012) (quoting Landis v. N. Am. Co., 299 U.S. 248, 254 (1936)). Courts stay litigation "in a wide variety of circumstances" and often when "a higher court is close to settling an important issue of law bearing on the action." Wing Shing Prods. Ltd. v. Simatelex Manufactory Co., No. 01-CV-1044 (RJH)(HBP), 2005 U.S. Dist. LEXIS 6780, *5 (S.D.N.Y. Apr. 19, 2005) (citing Marshel v. AFW Fabric Corp., 552 F.2d 471 (2d Cir. 1977); Goldstein v. Time Warner New York City Cable Group, No. 96-CV-0673 (LBS), 3 F.Supp.2d 423, 439 (S.D.N.Y. Apr. 24, 1998)). A stay can be appropriate where the other proceeding may "bear upon [the instant case], even if such proceedings are not necessarily controlling of the action that is to be stayed." Credit Suisse Sec. LLC v. Laver, 2019 U.S. Dist. LEXIS 90706, *7 (S.D.N.Y. May 29, 2019) (quoting LaSala v. Needham, No. 04-CV-9237 (SAS), 399 F. Supp. 2d 421, 427 (S.D.N.Y. Sept. 1, 2005)).

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[2] Of note, Merrill v. Milligan, Index No. 21-1086, involving a challenge to Alabama's redistricting plan under Section 2 of the Voting Rights Act, is currently pending before the United States Supreme Court. It is anticipated that the decision in Merrill may change the analysis in VRA § 2 challenges. The pending Merrill decision provides another, separate, basis to stay this action until the decision is issued. See Jugmohan v. Zola, 2000 U.S. Dist. LEXIS 1920, *5 (S.D.N.Y. Feb. 25, 2000) ("Postponing the final disposition of a case pending an upcoming decision by the United States Supreme Court is a practice exercised by the Second Circuit in the interest of judicial economy.")

In determining whether to grant a stay, courts in the Second Circuit consider five factors: (1) the private interests of the plaintiffs in proceeding expeditiously with the litigation as balanced against the prejudice to the plaintiffs if delayed; (2) the private interests of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest. See U.S. v. Town of Oyster Bay, No. 14-CV-2317 (ADS) (SIL), 66 F. Supp. 3d 285, 289 (Dec. 5, 2014 E.D.N.Y) (citing Kappel v. Comfort, No. 95-CV-2121 (MBM), 914 F. Supp. 1056, 1058 (S.D.N.Y. Feb. 15, 1996)).

Here, all five factors indicate a stay is warranted. First, as described above, the challenged law cannot be implemented unless and until the Appellate Division issues a decision reversing the lower court ruling. Plaintiffs cannot be prejudiced, because elections in the City will be run as though the law was never passed during the period of the stay. Even if the Fossella decision is reversed on appeal, the law will not immediately have an effect on plaintiffs because there will necessarily be some reasonable period of preparation prior to the first election in which it may be implemented. Second, the burden on the defendants to engage in motion practice and/or discovery is significant, particularly given that the law is not being implemented and may not ever be implemented. Defense of this action will require extensive time and attention from City employees from multiple agencies, drawing attention away from other tasks and responsibilities. Third, a stay preserves the Court's time and resources. Fourth, with regard to non-parties, defendants note that plaintiffs apparently served subpoenas upon non-party community organizations that advocate for immigrants in the City during the pendency of the Richmond County Coachman matter. Therefore, to the extent plaintiffs intend to seek information and documents from community organizations who are not a party to this litigation, those organizations would also be burdened by unnecessary, or unnecessarily broad, discovery regarding their advocacy for a law that may never go into effect. Finally, for the same reasons described herein, the public is also served by a stay because it avoids potentially unnecessary, time-consuming, and expensive litigation which would take up the resources of the City and the Court, with little to no prejudice to plaintiffs. See, e.g., Yahraes v. Rest. Assocs. Events Corp., No. 10-CV-0935 (SLT), 2010 U.S. Dist. LEXIS 162016, *4-5 (E.D.N.Y. Aug. 3, 2010) ("Rather than burden the parties with time-consuming and expensive collective action discovery and motion practice, it is both more fair and efficient to stay this process from moving forward until the [other] proceedings are completed.")

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Accordingly, because the challenged law was invalidated by the lower court ruling in Fossella, and may never be implemented, it is an appropriate use of the Court's authority to stay this matter pending the appellate decision in Fossella. Defendant City respectfully requests that the Court schedule a pre-motion conference for the purposes of discussing the above-described motion to stay, and, in the meantime, stay the City's deadline to file an Answer to the Complaint at least until the Court issues a decision on this motion.

The City thanks the Court for its attention to this matter.

Respectfully submitted,

/S

Aimee K. Lulich

cc: Counsel of Record (By ECF)