PUBLIC INTEREST LEGAL FOUNDATION

Filed via ECF
The Honorable Brian M. Cogan
United States District Court for the
Eastern District of New York

October 31, 2022

Re: *Coachman, et al. v. City of New York, et al.*, No. 22-cv-5123 (BMC)

Your Honor,

On behalf of the Plaintiffs in the above-captioned matter, we write in response to the October 6, 2022, letter from counsel for Defendant City of New York (hereinafter "NYC") regarding its anticipated motion to stay. It appears that the grounds for the motion will be that this matter *may* be moot, depending on a pending appeal of a state law challenge.

Plaintiffs' claims, brought under the Voting Rights Act of 1965 and the 15th Amendment, are not close to moot. Indeed, NYC does not ask this court to *dismiss* Plaintiffs' case. Instead, NYC asks for a stay of unknown duration despite Plaintiffs' continued injury since the passage of the Foreign Citizen Voting Law (the "Law").

As the Complaint alleges, there is direct evidence in the legislative record that the *passage* of Local Law 11 was intended to allocate political power based upon race in violation of Section 2 of the Voting Rights Act and the 15th Amendment of the Constitution. *See* Complaint ¶¶ 23-29. When legislators act with a racial purpose in enacting an election practice, Section 2 of the Voting Rights Act and the 15th Amendment have been violated.[1] NYC argues that this case is moot because of a decision in a state court matter.[2] But NYC fundamentally misunderstands the law upon which Plaintiffs rely and the nature of their injury. Plaintiffs' injuries do not stem from the legality or illegality of the Law under the New York State Constitution. Nor are they dependent or intertwined with the outcome before the state court. Indeed, the plaintiffs in the state court case

RETRIEVED FROM DEMOCRACYDOCKET.COM

[1] NYC cites to the U.S. Supreme Court's pending review in *Merrill v Milligan,* Index No. 21-1086, as "another, separate, basis to stay this action until the decision is issued." Letter at 2. *Merrill* does not touch this dispute in the slightest. Indeed, *Merrill* is about reexamining the factors related to legislative redistricting articulated in *Thornburg v. Gingles*, 478 U.S. 30 (1986). To the extent *Merrill* even mentions the role of racial intent, it would require a plaintiff to plead racial intent in a redistricting case, an element squarely at odds with the existing jurisprudence but nevertheless pled here. This is a far cry from the case cited by NYC that was stayed pending the Supreme Court's decision "on the same issue." *Jugmohan v. Zola*, 98 Civ. 1509 (DAB), 2000 U.S. Dist. LEXIS 1910, at *14 (S.D.N.Y. Feb. 24, 2000).

[2] Earlier this year, Plaintiffs filed a similar action in state court challenging the Law under the Fifteenth Amendment. After the *Fossella* order issued, Plaintiffs' claims were dismissed without prejudice and without any determination on the merits. The judge questioned whether he *could* hear Plaintiffs' constitutional claims. Transcript at 4 ("[P]laintiffs have an argument that it's a constitutional law issue. That it is the 15th Amendment. If that's the case, there's issues involving Federal law, those cases are heard in Federal court.") He also noted that "no matter what I rule, I don't think the parties are without remedy and recourse, but maybe just not here." *Id.*

32 E Washington Steet, Suite 1675
Indianapolis, Indiana 46204
317-203-5599
www.publicinterestlegal.org

could lose their case and the Plaintiffs here still could prevail. Plaintiffs' injuries occurred when the Law was passed with the desire to allocate the electoral franchise based upon race. *See Rice v Cayetano,* 528 U.S. 495, 523 (2000). This alleged discriminatory purpose is a judicially cognizable injury that has already happened and would be redressed if the Court were to grant Plaintiffs' requested relief. Plaintiffs therefore have Article III standing to pursue a challenge to the Law. *See Davis v. Guam*, 785 F.3d 1311, 1316 (9th Cir. 2015).

In addition to the alleged direct evidence of an impermissible racial intent, Plaintiffs have pled, with specificity, a Voting Rights Act and 15th Amendment claim based on circumstantial evidence of a racially impermissible purpose in the passage of the Law. A plaintiff may prevail pursuant to the Voting Rights Act or the 15th Amendment by establishing the *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp*., 429 U.S. 252 (1977), factors were present in the passage of the law. Again, the injury occurs to a plaintiff upon the passage of the law, period. *See Davis* at 1316. Plaintiffs have pled, with specificity, a Voting Rights Act and 15th Amendment claim based on circumstantial evidence of a racially impermissible purpose in the passage of the Law.

Plaintiffs also allege a violation of 42 U.S.C. § 1983 and seek attendant damages for the injuries they have incurred. "The purpose of § 1983 is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails." *Wyatt v. Cole*, 504 U.S. 158, 161 (1992). This case presents legal claims–including claims for damages–pursuant to federal law that are not at issue in the state court.

This case is ripe, and not moot, because Plaintiffs suffered a statutory and constitutional injury immediately upon the passage of a law intended to weaken their ability to elect candidates of choice based on an explicit and circumstantial purpose. Plaintiffs' claims are distinct entirely from the equitable claims brought in *Fossella, et al v Adams, et al*, Index No. 85007/2022 (N.Y. Sup. Ct. Richmond Co. 2022) ("*Fossella*").

Fossella turned on a question of home rule obligations under the New York Constitution and statutes related to procedural requirements to enact a voting qualification change as well as whether the New York Constitution allows foreigners to vote as a matter of state law.

Instructive here is a federal judge's denial of a motion to stay a federal challenge pending parallel litigation in state court regarding North Carolina's voter identification law. *N.C. State Conference of the NAACP v. Cooper*, 397 F. Supp. 3d 786, 798 (M.D.N.C. 2019). There, defendants argued that the federal court should abstain as "the two state court proceedings 'currently underway . . . may resolve the outstanding issues related to the Act and thereby obviate the need for the Court's adjudication of the Act's validity.'" *Id*. at 793. The court determined that "Plaintiffs' Complaint does not raise issues requiring an interpretation or clarification of an unclear state law," *id*. at 794, and "'[w]here there is no ambiguity in the state statute, the federal court should not abstain but should proceed to decide the federal constitutional claim.'" *Id*. at 795. According to the court,

> Moreover, beyond conclusory assertions, [defendants] fail to explain how a ruling in the state court actions as to the lawfulness of [the challenged law]…would eliminate or substantially modify the *federal* constitutional issues raised in Plaintiffs' Complaint. *See Hendon v. N.C. State Bd. of Elections*, 633 F. Supp. 454, 465 (W.D.N.C. 1986) ("It would defeat the purpose of the Civil Rights Acts and the Voting Rights Acts if the 'assertion of a federal claim in federal court must await an attempt to vindicate the same claim in state court.'")

RETRIEVED FROM DEMOCRACYDOCKET.COM

Id. at 796 (internal citations omitted). Further, as to those plaintiffs' § 1983 claims, the court noted that "[i]t is not for the courts to withdraw that jurisdiction which Congress has expressly granted under [S]ection 1983 where such a withdrawal is contrary to the purpose of Congress in extending that alternative forum." *Id*. In denying the stay, the court found its inherent power to stay "is not unbounded," *id*. at 797, and that "that the potential harm to Plaintiffs' attempt to vindicate their voting rights prior to the impending election vastly outweighs any countervailing interests of judicial economy and hardship to [defendants]." *Id*. at 798.

Here NYC's arguments are not pursuant to any established doctrine of abstention but, rather, are based only upon a court's discretionary authority to stay a proceeding. "The person seeking a stay 'bears the burden of establishing its need.'…'[A]bsent a showing of undue prejudice upon defendant or interference with his constitutional rights, there is no reason why plaintiff should be delayed in its efforts to diligently proceed to sustain its claim.'" *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 97 (2d Cir. 2012) (affirming denial of stay request in civil action even when there was an imminent trial in a parallel criminal action.) "'[I]f there is even a fair possibility that the stay for which he prays will work damage to someone else,' the movant 'must make out a clear case of hardship or inequity in being required to go forward'" *Lasala v. Needham & Co.,* 399 F. Supp. 2d 421, 427 (S.D.N.Y. 2005) (citations omitted.) NYC has not done so.

When considering whether to stay a case, courts consider five factors. "Balancing these factors is a case-by-case determination, with the basic goal being to avoid prejudice." *Volmar Distribs. v. N.Y. Post Co*., 152 F.R.D. 36, 39 (S.D.N.Y. 1993). Each factor counsels against issuing a stay.

First, Plaintiffs will be prejudiced if this matter is stayed. NYC's focus on when the Law will be implemented misses the mark. Letter at 3. As the Complaint alleges, Plaintiffs "were injured the moment Local Law 11 was passed." Complaint ¶ 2. "Plaintiffs will continue to suffer an actual, ongoing, concrete injury that is directly traceable to this discriminatory law that can only be redressed by a favorable decision by this Court." *Id*. Indeed, Plaintiffs have already been prejudiced by NYC's request for a pre-motion hearing as it has effectively allowed NYC to delay the case pending the determination on NYC's motion. The prejudice experienced by Plaintiffs will only multiply exponentially if this case is stayed.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Second, the burden on the defendants is minimal. Indeed, defendant Board of Elections did not even join in NYC's request and, instead, filed its Answer. NYC's assertions of a burden are not unique to this case but, rather, could be said of any litigation. *See* Letter at 3.

Third, the interests of the Court and the public do not support a stay. As the Supreme Court has recognized, "the federal courts have a 'virtually unflagging obligation' to exercise their jurisdiction except in those extraordinary circumstances 'where the order to the parties to repair to the State court would clearly serve an important countervailing interest.'" *Deakins v. Monaghan*, 484 U.S. 193, 203 (1988). Additionally, the interests of persons not parties to this case – and the public at large – support a prompt resolution of Plaintiffs' weighty claims. For these reasons, the Court should decline to stay this matter.

Respectfully submitted,

/s/ Maureen Riordan
Maureen Riordan

SUPREME COURT OF THE STATE OF NEW YORK
RICHMOND COUNTY - CIVIL TERM - PART: IAS-10

PHYLLIS COACHMAN, et. al., Index # 150200/22
PLAINTIFF,
-against-
NEW YORK CITY BOARD OF ELECTIONS,
DEFENDANT.
Motions

26 Central Avenue
Staten Island, New York 10301
July 29, 2022

B E F O R E:

HONORABLE RALPH J. PORZIO, Justice

A P P E A R A N C E S:

PUBLIC INTEREST LEGAL FOUNDATION
Attorneys for the Plaintiffs
BY: CHRISTIAN ADAMS, ESQ. and KAYLAN PHILLIPS, ESQ.

JOSHPE MOONEY PALTZIK, LLP
Attorneys for the Plaintiffs
1407 Broadway - Suite 4002
New York, NY 10018
BY: EDWARD PALTZIK, ESQ.

STROOCK & STROOCK & LAVAN, LLP
Attorneys for the Defendant
180 Maiden Lane
New York, NY 10038
BY: SHAUNEIDA NAVARRETE, ESQ.

* * * * * *

KARYN S. GUTKIN
SENIOR COURT REPORTER

kg

RETRIEVED FROM DEMOCRACYDOCKET.COM

COURT CLERK: IAS Part 10, The Honorable Justice Porzio presiding.

This is Index Number 150200 of 2022, Phyllis Coachman against New York City Board of Elections.

Counsels, appearances for the record, please.

THE COURT: Just before you start, your clients are allowed to come up with you, if you'd like.

I think one of the plaintiffs was not going to be able to be here today, right?

MR. ADAMS: Mr. Murdoch is in Tennessee.

THE COURT: Right. But the other two should be able to be up here.

(Whereupon, two parties step forward.)

MS. COACHMAN: Thank you.

THE COURT: You're very welcome, of course.

Let's get the plaintiff first.

MR. ADAMS: Good morning, your Honor, I'm Christian Adams, for the plaintiffs.

THE COURT: Good morning.

MS. PHILLIPS: Kaylan Phillips, for the plaintiffs.

THE COURT: Good morning.

MR. PALTZIK: Good morning, your Honor. Edward Paltzik, Joshpe Mooney & Paltzik, counsel for plaintiffs.

RETRIEVED FROM DEMOCRACYDOCKET.COM

MS. NAVARRETE: Good morning, your Honor. Shauneida Navarrete, of Stroock, Stroock & Lavan, representing the defendant, New York City Board of Elections.

THE COURT: Good morning. Got it.

Swear in the parties.

COURT CLERK: Yes.

Parties, raise your right hand.

(Whereupon, the parties are sworn in by the court clerk.)

COURT CLERK: Just say your name for the record.

MS. COACHMAN: Phyllis Coachman, plaintiff.

THE COURT: Good morning.

MS. COACHMAN: Good morning.

MS. JAMES: Catherine James, plaintiff.

THE COURT: Good morning.

MS. JAMES: Good morning.

THE COURT: All right, why don't you have a seat.

Okay, well, does anybody want to be heard before I rule on some issues that I think need to be addressed?

You might be puzzled by that, but I'm not going to hide the ball, so to speak.

There's issues as to whether I have any ability to do anything with this case. One is going to be that I resolve the issue not with the legal theory that

RETRIEVED FROM DEMOCRACYDOCKET.COM

plaintiffs are bringing up in the other case, and there is nothing to really join this case with, that case is concluded. And my understanding, because I read the newspapers, is that New York City may appeal. That's one issue.

Second issue, plaintiffs have an argument that it's a constitutional law issue. That it is the 15th Amendment. If that's the case, there's issues involving Federal law, those cases are heard in Federal court.

Third, the issue is, is the right defendant a proper party. I don't think the New York City Board of Elections had really anything to do with this. It was the New York City council and the mayor.

So those are the three issues that I have. And I will let you briefly address them now, starting with the plaintiff, and then I will hear from the defendant, and I will give you a ruling.

And no matter what I rule, I don't think the parties are without remedy and recourse, but maybe just not here.

Plaintiffs first.

MR. ADAMS: Thank you, your Honor.

Let me address the easier one first, the Federal Court issue.

THE COURT: Don't tell me what's easier or what's

RETRIEVED FROM DEMOCRACYDOCKET.COM

not, you just address those issues. And if I left anything out, you let me know.

MR. ADAMS: Federal constitutional rights can be vindicated in state court, that is axiomatic. The 15th Amendment cause of action can be brought in the state court.

This Court has the authority to enforce Federal constitutional rights, and other state courts throughout the history of the Civil Rights Act and elsewhere have done so. The state courts of New York--

THE COURT: Don't you think there is a distinguishment, because didn't the states also enact the law that brought the case into state court? I'm just thinking out loud.

Go ahead.

MR. ADAMS: Well, there are plenty of New York State Court opinions on Federal constitutional rights.

THE COURT: I'm happy to hear one.

MR. ADAMS: Well--

THE COURT: Start with the Court of Appeals, go to the 2nd Department.

MR. ADAMS: Right. The--

THE COURT: Don't tell me there's a lot, don't tell me there's a progeny, lay it on me.

MR. ADAMS: Well, your Honor, frankly, I wasn't

RETRIEVED FROM DEMOCRACYDOCKET.COM

anticipating this argument so I didn't prepare for it, because nobody briefed it. So I apologize.

THE COURT: Go to the next issue.

MR. ADAMS: All right.

Secondly, look, if this Court thinks that the mayor and all these other interested parties are necessary, then let's have them and let's get going. I mean, if we can amend this and serve--

THE COURT: Hang on, hang on. It's not what I think, it's how I rule.

MR. ADAMS: Right.

THE COURT: But it's not like I'm going to get in the car today and say let me take a ride up to City Hall and I will bring in the council members and the mayor, that's not how it works. You have to bring them in in a lawsuit.

RETRIEVED FROM DEMOCRACYDOCKET.COM

MR. ADAMS: Which we would move for leave to amend and we will serve, and we would be right back here, which we can do that.

THE COURT: Well, that's okay, I don't mind waiting for you, but you have to do it the right way.

MR. ADAMS: Right.

THE COURT: Go to the next one.

MR. ADAMS: Well, I think your first wing was--

THE COURT: No, go onto number three, which is

the Board of Elections.

MR. ADAMS: Right. And, again, the Board of Elections, it has to be a party under the 15th Amendment because they, in fact, enforce. There is not an option there, you have to serve and plead the party that actually implements the Registration Law. We don't have an option there.

THE COURT: Which law would they be enforcing?

MR. ADAMS: The Registration Law. They are the party that registers--

THE COURT: I already ruled on it.

MR. ADAMS: Okay. You indicated that you were giving me questions to answer, and the ruling was that they need necessary parties to be added, I thought, or are you saying they're not a proper party?

THE COURT: You're the one that has to make the argument.

MR. ADAMS: Well, they're clearly a proper party under the case law. And in every single voting case, they always sue-- you always sue the defendant who implements the statute that is being challenged.

THE COURT: Okay, thank you.

Let me hear from the defendant.

MS. NAVARRETE: Good morning, your Honor.

We agree with what your Honor has stated

RETRIEVED FROM DEMOCRACYDOCKET.COM

regarding--

THE COURT: I didn't state anything, I gave you some ideas.

MS. NAVARRETE: Yes.

THE COURT: I gave you where my thought process is.

As I said originally, I don't want to hide the ball, I want you to be able to articulate these concerns that I have.

We know that when you handle a case, you need personal jurisdiction and you need subject matter jurisdiction, and you need the right parties.

I will hear from the defendant.

MS. NAVARRETE: And defendant's position is that as it pertains to personal jurisdiction and subject matter jurisdiction, that it's not quite at the point where plaintiffs have fulfilled their need or their showing that those two elements have been fulfilled.

As we stated in our papers, as pertains to the mootness point, this case or this local law has already been determined to be invalid.

And while it has been appealed, there is no stay of your permanent injunction; therefore, any harm that plaintiffs are claiming has not occurred yet.

And to be abundantly clear, we are not arguing

RETRIEVED FROM DEMOCRACYDOCKET.COM

that-- we are arguing that a stay should be enforced here.

Wade (phonetic) and Fossella, the cases in which you had ruled to move up through the ranks from the Appellate Division to the Court of Appeals, if necessary. And if Local Law 11 is found to be still a valid law, then there is no Coachman case.

Right now there is no live action in Coachman, because Local Law 11 has been found invalid and it is not going to be implemented by defendants.

As it pertains to necessary parties, we, as we stated in our papers, hold that or we state that the mayor and the city council are necessary parties, as well as the State BOE.

They have an interest in this case. As is clear in plaintiff's complaint, they have taken quite an issue with some of the words that the city council members have used when enacting this law.

It seems like most of their issues, in fact, are with the city council and the mayor, and not with the defendant.

So that is our position as it relates to the three issues that you addressed.

I think I failed to address the Federal claim issue. I don't have a position on that because that is not one that we have briefed. But we understand what your

RETRIEVED FROM DEMOCRACYDOCKET.COM

Honor has-- or the guidance or words that you stated so far as to the Federal claim.

THE COURT: Thank you.

I will give the plaintiff a brief reply.

MR. ADAMS: We believe, your Honor, that the substantial constitutional issues here are worthy, they're novel but substantial, and they're meritorious, and that is probably the most important part of all of this. And so that is our reply about that issue.

THE COURT: Okay, thank you.

I want to thank the attorneys for their presentation.

At this point, I'm denying your request to consolidate this matter with the Fossella case.

Reasons why, for any reviewing court: Amongst others, the matter has already been decided, and disposed of, in the case before me.

This Court found that the municipal voting law was null and void. And I do realize that there is thought of an appeal; I haven't seen if there was actually perfected, but I think there is notice. But there is no stay.

The only available request for relief by the plaintiffs is for this Court to make a finding that the municipal voting bill was adopted with impermissible

RETRIEVED FROM DEMOCRACYDOCKET.COM

racial intent, in violation of the 15th Amendment.

And I know counsel has stated that there is some case law on this, but I don't think I really even need to reach it right now.

I find that in this case the New York City Board of Elections is not the only proper respondent.

Counsel's even stated, when I've stated, that the mayor of the City of New York, as well as the city council, as well as the State Board of Elections, because I think the state is also involved, they would need to be proper parties.

And so I have two basic possible options. One is to permit the joinder of these parties. Or dismiss the matter without prejudice for there to be a proper refiling.

And that could be, if there is the case law that plaintiff claims there is, and I have no reason to doubt what the plaintiff has to say, but it can be filed in Federal court, it can be filed here. I don't know which statute would be here, since I've already determined that the one that was enacted is null and void.

And, in addition, you would need to serve the necessary parties, which I don't believe has been done yet. Though counsel says they can do it, well, that's what you have to do. You haven't done it yet. Okay? So

RETRIEVED FROM DEMOCRACYDOCKET.COM

those are my reasonings.

And the case will be dismissed without prejudice. I want to thank the attorneys. I want to thank the plaintiffs for being here.

I understand your argument. I haven't made a determination on the merits. If it comes before me with another filing, I will be glad to hear it.

Glad to see you all again. I'm glad to hear from the attorneys, because I appreciate their efforts.

So before we adjourn, anything in closing, besides that the plaintiff has an exception to my ruling?

MR. ADAMS: Your Honor, we will do as you instruct involving--

THE COURT: I didn't instruct, I only suggested.

MR. ADAMS: Right. We will take your suggestion and do those things that you suggest. Thank you.

THE COURT: All right. Maybe we will see you down the road.

Ms. Navarrete, anything for the defendant?

MS. NAVARRETE: No, I just thank the Court for your time today.

THE COURT: Always my pleasure.

Okay. If anybody needs the minutes, you can approach our reporter. And good luck.

Good luck to both of you, very nice to see you.

RETRIEVED FROM DEMOCRACYDOCKET.COM

MS. COACHMAN: Thank you, your Honor.

MS. JAMES: Thank you.

THE COURT: You're very welcome. Take care.

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

Karyn S. Gutkin

KARYN S. GUTKIN
Senior Court Reporter

RETRIEVED FROM DEMOCRACYDOCKET.COM