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April 8, 2024

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)

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 Order dated April 1, 2024, I write in response to Plaintiffs' letter motion to amend the Complaint. See Request to File Motion to Amend Complaint, ECF Document ("Doc.") No. 34.

By way of background, Plaintiffs challenge Local Law 11 of 2022, which would permit 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 "declared null and void" pursuant to the New York State Constitution and New York law. See Fossella v. City of N.Y., Richmond County Supreme Court, Index No. 85007/2022.[1] The decision was appealed to the New York State Appellate Division, Second Department. See Fossella v. City, No. 2022-5794 (App. Div. 2d Dep't). On February 21, 2024, the Appellate Division issued an Opinion and Order[2] affirming, in part, the trial court's order permanently enjoining implementation of Local Law 11. The Appellate Division's Opinion and Order has been appealed to the New York Court of Appeals.[3]

The instant matter was commenced on or about August 29, 2022, after Local Law 11 was enjoined. See Complaint. Defendant New York City Board of Elections ("BOE") Answered on or about October 7, 2022. See Doc. No. 20. Defendant City sought a stay pending

[1] A Copy of the Richmond County Decision & Order was previously filed at Doc. No. 19, Attachment 1.
[2] See ECF Doc. No. 32, Attachment 1.
[3] See ECF Doc. No. 33, Attachments 1 and 2.

appeal, which was granted on November 8, 2022. See Doc. No. 16 and Minute Entry and Order dated November 8, 2022. Plaintiffs now seek leave to amend the Complaint to add claims under the 14th Amendment of the U.S. Constitution and Section 3(c) of the Voting Rights Act ("VRA"). See Doc. No. 34. Defendant City opposes the request to amend the Complaint at this time because (1) this matter should remain stayed pending appeal, and (2) Plaintiffs lack standing, thus, the proposed amendment would be futile.

First, the Court properly granted a stay pending decision from the Appellate Division, and, for the same reasons, the stay should remain in place until there is a decision by the Court of Appeals. 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)). 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 that the stay continues to be warranted. First, as described above, Plaintiffs cannot be prejudiced, because the law cannot be implemented or enforced. Further, it is unclear what, if any, benefit an amendment at this premature stage would offer to Plaintiffs, who will most likely wish to amend again following the issuance of the decision by the Court of Appeals regardless of the outcome. Second, a continued stay would serve the Defendants', Court's, and public's interests in judicial economy and the avoidance of expensive and time-consuming litigation. This is particularly true where, as here, the Court of Appeals' decision will have a direct impact on the defenses and the substance of motion practice in this matter. Additionally, 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 discovery regarding their advocacy for a law that may never go into effect. Accordingly, the stay should remain in place until a final decision is issued by the Court of Appeals. 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.")

Additionally, Defendant City opposes amendment of the Complaint because it would be futile. Once a responsive pleading has been served, amendment of the Complaint may be made "only by leave of court or by written consent of the adverse party." Fed. R. Civ. P.

15(a)(2). Although, generally, leave to amend should be "freely give[n]…when justice so requires", Fed. R. Civ. P. 15(a)(2), "[n]onetheless, a motion to amend should be denied" if the amendment would be futile, cause undue delay, or undue prejudice. Dluhos v. Floating and Abandoned Vessel Known as "New York", 162 F.3d 63, 69 (2d Cir. 1998) (citations omitted).

Here, amendment would be futile because Plaintiffs lack standing to bring any of the claims included in the proposed First Amended Complaint. To establish standing, a plaintiff must show that it has suffered an "injury in fact" that is "fairly traceable" to the defendant's conduct and would likely be "redressed by a favorable decision." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). There has been no action taken to implement Local Law 11, as it has been enjoined since shortly after its enactment. Because Plaintiffs cannot allege that their voting rights have been impacted by the enactment of Local Law 11 (because they have not), they have not suffered any "injury in fact" that could be "redressed by a favorable decision." Declarations or injunctions under the 14th or 15th Amendments would have no impact on Plaintiffs' rights. Further, because Plaintiffs do not have standing to proceed under the 14th or 15th Amendments, any claim under Section 3(c) of the VRA also fails. See 52 U.S.C. § 10302(c) (permitting a court to retain jurisdiction and require preclearance "if… the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred…")

Finally, Plaintiffs' citation to Catholic League for Religious & Civil Rights v. City and County of San Francisco, 624 F.3d 1043, 1052 (9th Cir. 2010), an out-of-circuit decision in a First Amendment Establishment Clause challenge, is unavailing. In Catholic League, the Ninth Circuit found standing where a city passed a resolution condemning Catholic beliefs regarding homosexuality, and the plaintiffs were Catholic San Francisco citizens who asserted that the resolution placed them in the status of outsiders and demonstrated hostility to their religion by the political community. Id. at 1049. Here, there was no condemnation and no exclusion. Rather, Plaintiffs allege, at most, "a psychological consequence presumably produced by observation of conduct with which [Plaintiffs] disagree[]." Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 485 (1982); see also Urso v. Mohammad, 2023 U.S. Dist LEXIS 40472, *24-25 (D.Conn. March 10, 2023) (distinguishing the "injury" of "exclusion or denigration on a religious basis within the political community" and a chilling of access to government arising out of official condemnation from "psychological consequence"). Accordingly, any amendment of the Complaint would be futile.

Accordingly, because the challenged law has been invalidated in Fossella, and may never be implemented, it is an appropriate use of the Court's authority to continue to stay this matter pending the final appellate decision in Fossella. Defendant City respectfully requests that the Court deny Plaintiffs' request to amend the complaint prior to resolution of the Fossella appeal.

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

Respectfully submitted,

/S

Aimee K. Lulich

cc: Counsel of Record (By ECF)