

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JAMILA JOHNSON, ET AL.

DOCKET 3:18-cv-00625-SDD-EWD

VERSUS

KYLE ARDOIN, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF STATE

DEFENDANT'S REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION
TO MOTION FOR PROTECTIVE ORDER

MAY IT PLEASE THE COURT:

This reply memorandum is filed by Defendant, Secretary of State, in support of the motion for protective order (Doc 48-1) and to reply to Plaintiffs' opposition memorandum (Doc. 49).

What Plaintiffs have done throughout the opposition memorandum is cherry pick a general statement of law from the cases they cite without going further into the case and understanding how those legal principles are applied in the particular case.

For example, *June Med. Servs., LLC v. Gee*, No. 17-404-BAJ-RLB, 2018 WL 357874, at *1 (M.D. La. Jan. 10, 2018), was cited by Plaintiffs for the proposition that "the party seeking a protective order has the burden to show the necessity of its issuance, which contemplates a specific set for facts as distinguished from stereotypical and conclusory statements." Plaintiffs fail to cite a subsequent statement in the case that "[a] trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined." *Petrus v. Bowen*, 833 F.2d 581, 583 (5th Cir. 1987); *see also Landry v. Air Line*

Peloes Ass’n Int’l AFL-CIO, 901 F.3d 404, 436 n. 114 (5th Cir. 1990) (“Trial courts possess broad discretion to supervise discovery.”).

The magistrate in *June Med Servs., LLC* “considered the record as a whole” and found “good cause for staying discovery on the pending motion to dismiss,” concluding that “a stay of discovery in this case will prevent any undue burden and expense on Defendants should the allegations in the Complaint be dismissed or narrowed.” No. 17-404-BAJ-RLB, 2018 WL 357874, at *5-6.

Plaintiffs are simply wrong in their contention that a favorable ruling on the Secretary of State’s motion to dismiss does not have the possibility of dismissing Plaintiffs’ case. Defendant’s first defense is jurisdictional based upon Plaintiffs’ failure to request a three-judge panel. Should the motion be granted, the remedy is dismissal, not the empaneling of a three-judge panel as Plaintiffs contend. Another basis for dismissal is laches, due to Plaintiffs waiting several years and three Congressional elections, now a fourth, to bring their claims, the remedy for which is also dismissal. See *Maxwell v. Foster*, 1999 WL 33507675 (W.D. La. Nov. 24, 1999).

In *June Medical Services, LLC*, the court later issued a second stay of discovery until after “the Court renders a decision on the Motion For Partial Dismissal of Plaintiff’s First Amended Complaint.” See Doc. 96 and Doc. 97 in Case No. 3:17-cv-404-BAJ-RLB (M.D. La.). The rulings of the court in *June Medical Services, LLC*, support the issuance of a protective order in this case until the Court rules on the pending motion to dismiss.

Mapp v. UMG Recordings, Inc., No. 15-602-JWD-RLB, 2017 WL 3599166, at *3 (M.D. La. 8/21/2017), also cited by Plaintiffs, is another Middle District case in which two stays of discovery were issued, one staying all deadlines until the district court ruled on a defendant’s

motion for judgment on the pleadings, (at *2), and a second and later stay of discovery until after a ruling on the pending motion to dismiss, (at *4). As the *Mapp* decision states, “[a] trial court has broad discretion and power to stay discovery until preliminary questions that may dispose of the case are determined,” (at *3), the one exception being “when it could prevent a party from having a sufficient opportunity to develop a factual base for defending against a dispositive motion.” (at *3) (*See* Doc. 47-1 (Exhibit A).)

Plaintiffs cite *Notariano v. Tangipahoa Parish Sch. Bd.*, No. 61-17832, 2018 WL 3844882, at *2 (E.D. La. Aug. 13, 2018) for the proposition that a “stay is the exception rather than the rule.” Nonetheless, the magistrate in *Notariano* granted a stay of discovery directed to the individual defendants until their qualified immunity motion to dismiss was decided, as a favorable ruling would dismiss those individuals from the case. A stay as to the other defendants was denied for other reasons (none of which are present in the case before the court): (1) the discovery deadline was fast approaching and discovery had barely begun, and (2) other deadlines and a trial date had already been continued once in the case.

Plaintiffs are also disingenuous about the three cases they cite for their contention that three other courts have rejected the three-judge jurisdictional argument, citing district courts in Alabama, Mississippi and Georgia, none of which are binding on this court even if factually similar, which would take a detailed study to determine.

Plaintiffs cite the Georgia case, *Dwight v. Kemp*, No. 18-2869, (W.D. Ga. 9/12/18), without letting the court know that the submission of the case to a single judge was by agreement of the parties. See Doc. 25 in the *Dwight* record. Nor did the Plaintiffs disclose to this Court that the Mississippi case they cite is on appeal to the United States Court of Appeals for the Fifth Circuit. *Thomas v. Bryant*, No. 18-cv-441 (S.D. Miss.); *Thomas v. Bryant*, No. 19-60133 (5th

Cir.) (notice of appeal filed March 1, 2019). Finally, the Alabama case has not yet been tried or appealed. *Chestnut v. Merrill*, 18-907 (N.D. Ala.).

CONCLUSION

Plaintiffs waited until late in the seventh year of a ten-year reapportionment cycle to contest a 2011 congressional reapportionment. Their suit was filed at or near the time of qualifying for the fourth of five elections held under the districting plan they challenge. These Plaintiffs complain that the defendant is somehow delaying their case, despite the fact that their last filing opposing the motion to dismiss came on February 13, 2019. Plaintiffs dilatory actions should not serve as a reason as to why this case should not follow the ordinary course of litigation. It appears Plaintiffs want the Court and the Secretary of State to each drop what they are doing, disregard all rules of procedure, and jump straight to a result in their favor.

A favorable decision on the pending motion to dismiss will result in dismissal of Plaintiffs' case. Defendant should not be forced to undergo the undue time, expense or burden caused by the premature discovery. Defendant's motion for protective order should be granted and discovery and initial disclosures stayed, at least until the motion to dismiss is decided by this Court.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I do hereby certify that, on this 13th day of March, 2019, the foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system which gives notice of filing to all counsel of record. Counsel of record not registered in the CM/ECF system were served via other means.

s/Celia R. Cangelosi
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