

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STEPHEN LAROQUE, ANTHONY CUOMO,)
 JOHN NIX, KLAY NORTHRUP, LEE)
 RAYNOR, and KINSTON CITIZENS FOR)
 NON-PARTISAN VOTING,)
)
 Plaintiffs,)
)
 v.)
)
 ERIC H. HOLDER, JR.)
 ATTORNEY GENERAL OF THE)
 UNITED STATES)
)
 Defendant.)

Civ. No.: 1:10-CV-00561-JDB

**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
ATTORNEY GENERAL’S MOTION TO STAY PROCEEDINGS**

The Government fails to establish its entitlement to a stay. “The party moving for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.” *Barton v. District of Columbia*, 209 F.R.D. 274, 278 (D.D.C. 2002) (citation and internal quotations omitted). In deciding this motion, the Court may consider the stay’s impact on the parties, the Court, and the general public. *See id.*; *Feld Entmtm’t, Inc. v. ASPCA*, 523 F. Supp. 2d 1, 4–5 (D.D.C. 2007). Here, the motion should be denied because a stay does not conserve the resources of the parties or the Court, is contrary to the public interest, and is wholly unnecessary.

1. The stay will not meaningfully conserve judicial resources or the parties’ resources. It will not conserve this Court’s resources because this Court will likely resolve the motions to dismiss well in advance of any decision on the summary judgment motion. Plaintiffs have already filed the motion for summary judgment and are not opposed to filing a reply memorandum before the Court decides the motions to dismiss. Thus, the only resources that might be affected are the Government’s. But a stay will not cognizably conserve the Government’s resources because the Government must already brief the

merits of Section 5's constitutionality in the related case of *Shelby County v. Holder*, Civ. No.:1-10-cv-00651-JDB, where no motion to dismiss is pending. In any event, the Government meticulously and exhaustively briefed this same issue before a three-judge panel and the Supreme Court in *Northwest Austin Municipal District Number One v. Holder*, 129 S. Ct. 2504 (2009), *rev'g*, 573 F. Supp. 2d 221 (D.D.C. 2008).

2. Granting a stay is contrary to the public interest. The predictable and inevitable result of the Government's effort to delay summary judgment briefing is to ensure that the constitutionality of Section 5 is decided after the 2012 elections. If the Government's delaying tactics succeed, the nine states and almost 900 counties covered by Section 5 will have to conduct the new round of redistricting for all offices under a cloud of uncertainty. And if Section 5 is invalidated, they will have to engage in a *second*, mid-decade redistricting to redraw all districts affected by that unconstitutional process. Thus, the interests of the public, and the Justice Department itself, are best served if the stay motion is denied, so that constitutionality of Section 5 may be promptly resolved in time for this redistricting cycle.

3. Granting the stay would be particularly harmful because it is merely the first step in a series of Government efforts to unduly prolong and postpone summary judgment briefing. The Government makes clear that it will not file a summary judgment opposition even after its motion to dismiss is denied. As in *Shelby County*, the Government's legal response in this case purportedly must further await "extensive discovery . . . to respond adequately to Plaintiffs' motion for summary judgment"—which will take roughly nine months. *See* U.S. Stay Memo. (Doc. No. 27) at 5; Parties Joint Resp. (Doc. No. 28) at 3–5. But, for the reasons set forth at length by the plaintiffs in *Shelby County*, there is plainly no need for such "extensive discovery" in this case. *See* Pltfs. Reply in Supp. of Mot. for Summ. J. at 8–14, *Shelby County* (D.D.C. July 1, 2010), Doc. No. 14 [hereinafter *Shelby County* Pltfs. Reply]. Plaintiffs here filed only a facial challenge to the constitutionality of Section 5 of the Voting Rights Act, *see* Pltfs. Summ. J. Mot. (Doc. No. 23), so any facts or discovery concerning Kinston would be irrelevant. *See* *Shelby County* Pltfs.' Reply at 8–14. The Court's decision on Congress's power to enact Section 5 in 2006 will be wholly unaffected by the past or present state of race relations in

Kinston—the Court will not invalidate Section 5 because the Kinston situation is good or uphold it because the situation is bad.

To be sure, what Congress knew about the *general* state of discrimination in the *covered jurisdictions* (and how that compares to uncovered jurisdictions) is relevant. But the particular situation in Kinston is not and there is no need for *discovery* to examine the relevant general question on discrimination in the covered jurisdictions. First, the only facts that are relevant to this inquiry are the facts established in the legislative record and in other government records that cannot reasonably be disputed. *See id.* at 10–14; Statement of Material Facts In Supp. of Pltfs.’ Mot. for Summ. J. (Doc. No. 23). Only these facts are relevant because the question is whether Congress developed a sufficient “legislative record” to support the constitutionality of Section 5. *See, e.g., City of Boerne v. Flores*, 521 U.S. 507, 530 (1997); *Nw. Austin*, 573 F. Supp. 2d at 247 (limiting its review to “the actual evidence Congress considered”). The Justice Department itself acknowledged this truism in *Northwest Austin*: “In keeping with the Supreme Court’s approach in *City of Rome*, this Court must determine whether the ongoing *record of voting discrimination Congress amassed in 2006* was sufficient to justify Congress’s decision to extend the life of Section 5.” Mem. in Supp. of Def.’s Mot. for Summ. J. at 12, *Nw. Austin*, No. 06-cv-1384 (D.D.C. May 15, 2007) (emphasis added). In all events, even if information outside the legislative record should be analyzed, it will consist of *publicly available* data which the Department can readily obtain without *discovery* of *these* Plaintiffs.

Since additional external data about the existence or absence of discrimination in covered jurisdictions is both irrelevant and may be acquired without party-specific discovery, the Government’s attempt to justify a stay based on its need for “extensive discovery” is without merit.

4. None of the cases cited by the Government are to the contrary. *See* U.S. Stay Memo. at 4. In two of the cases, the court merely noted in passing that it had previously stayed consideration of the summary judgment motion, without providing any explanation or justification for the decision. *See Md. Cas. Ins. Co. v. Newpark Towers Assoc.*, No. 89-0649, 1990 WL 183603, at *7 (D.D.C. Nov. 5, 1990); *Am. Ins. Assoc. v. Selby*, 624 F. Supp. 267, 269 (D.D.C. 1985). And in *La Reunion Aeriennne v. Socialist*

People's Libyan Arab Jamahiriya, a plaintiff had filed a summary judgment motion in a suit against foreign government defendants. 477 F. Supp. 2d 131, 133 (D.D.C. 2007). The defendants requested a stay, and the court noted in dictum that this request was “justified” because “principles of sovereign immunity, which protect states against trial and the attendant burdens of litigation, insulate defendants from the obligation to respond to the [summary judgment] motion, at least until the threshold issues of jurisdiction and immunity are resolved.” *Id.* at 140 (internal citation and quotation marks omitted). But the Government does not and cannot assert any immunity from the “burdens of litigation” in suits challenging the constitutionality of federal law and, in fact, is proposing to *increase* those “burdens” by requesting costly, time-consuming, and irrelevant discovery. Thus, the Court should adopt the approach of courts rejecting similar efforts to delay summary judgment briefing. *See Brookens v. Solis*, 616 F. Supp. 2d 81, 97 (D.D.C. 2009) (denying Rule 56(f) motion to stay proceedings since party failed to demonstrate it needed discovery); *Barton*, 209 F.R.D. at 278 (denying motion to stay proceedings pending resolution of plaintiff counsel’s motion to withdraw because the stay would “unnecessarily delay” the case).

* * *

For the foregoing reasons, the Attorney General’s motion to stay the proceedings should be denied.

September 8, 2010

Respectfully submitted,

/s/ Michael A. Carvin

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