

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DAVID HARRIS and CHRISTINE)
BOWSER,)
)
Plaintiffs,)
)
v.) 1:13CV949
)
PATRICK MCCRORY, in his)
capacity as Governor of North)
Carolina, NORTH CAROLINA)
STATE BOARD OF ELECTIONS,)
and JOSHUA HOWARD, in his)
capacity as Chairman of the)
North Carolina State Board)
of Elections,)
)
Defendants.)

ORDER

Pending before the Court is Defendants' "Emergency Motion to Stay Final Judgment and to Modify Injunction Pending Supreme Court Review." ECF No. 145. For the reasons that follow, the defendants' motion is **DENIED**.

The Court considers four factors when determining whether to issue a stay pending appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Hilton v.

Braunskill, 481 U.S. 770, 776 (1987); accord Long v. Robinson, 432 F.2d 977, 979 (4th Cir. 1970).

The Court addresses each factor in turn, keeping in mind that “[a] stay is considered ‘extraordinary relief’ for which the moving party bears a ‘heavy burden,’” and “[t]here is no authority to suggest that this type of relief is any less extraordinary or the burden any less exacting in the redistricting context.” Larios v. Cox, 305 F. Supp. 2d 1335, 1336 (N.D. Ga. 2004) (quoting Winston-Salem/Forsyth Cty. Bd. of Educ. v. Scott, 404 U.S. 1221, 1231 (Burger, Circuit Justice, 1971)).¹

The defendants have not made a strong showing that they are likely to succeed on the merits. First, the Court has already found that Congressional Districts (“CD”) 1 and 12 as presently drawn are unconstitutional. Second, the Court’s holding as to liability was driven by its finding that race predominated in

¹ As with other types of cases, district courts evaluating redistricting challenges have generally denied motions for a stay pending appeal. See United States v. Hays, 515 U.S. 737, 742 (1995); McDaniel v. Sanchez, 452 U.S. 130, 136 (1981); Roman v. Sincock, 377 U.S. 695, 703 (1964); Lodge v. Buxton, 639 F.2d 1358, 1362 (5th Cir. 1981); Seals v. Quarterly Cty. Court of Madison Cty., Tenn., 562 F.2d 390, 392 (6th Cir. 1977); Cousin v. McWherter, 845 F. Supp. 525, 528 (E.D. Tenn. 1994); Latino Political Action Comm., Inc. v. City of Boston, 568 F. Supp. 1012, 1020 (D. Mass. 1983); see also Wilson v. Minor, 220 F.3d 1297, 1301 n.8 (11th Cir. 2000) (denying motion to stay district court’s order implementing new plan pending appeal).

the drawing of CD 1 and 12. The Supreme Court will review - if it decides to hear this case - that finding for clear error; thus, even if the Supreme Court would have decided otherwise, it can reverse only if "[it] is 'left with the definite and firm conviction that a mistake has been committed.'" Easley v. Cromartie, 532 U.S. 234, 242 (2001) (quoting United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)).

In addition, the defendants have failed to show that they will suffer irreparable injury. The defendants vaguely suggest that there will be irreparable harm to the "citizens of North Carolina" if the Court denies the motion. The Court does not know who the defendants are referring to when they mention, broadly, "citizens." What is clear is that the deprivation of a "fundamental right, such as limiting the right to vote in a manner that violates the Equal Protection Clause, constitutes irreparable harm." Johnson v. Mortham, 926 F. Supp. 1540, 1543 (N.D. Fla. 1996) (citing Elrod v. Burns, 427 U.S. 347, 373-74 (1976)). To force the plaintiffs to vote again under the unconstitutional plan - and to do so in a presidential election year, when voter turnout is highest, see Vera v. Bush, 933 F. Supp. 1341, 1348 (S.D. Tex. 1996) - constitutes irreparable harm to them, and to the other voters in CD 1 and 12. Therefore, the

Court finds that the second and third Long factors weigh in favor of denying the defendants' motion.

Finally, the Court finds that the public interest aligns with the plaintiffs' interests, and thus militates against staying this case. As noted, the harms to the plaintiffs would be harms to every voter in CD 1 and 12. Further, the harms to North Carolina in this case are public harms. The public has an interest in having congressional representatives elected in accordance with the Constitution. As the Supreme Court has noted, once a districting scheme has been found unconstitutional, "it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." Reynolds v. Sims, 377 U.S. 533, 585 (1964).

For these reasons, Defendants' Emergency Motion to Stay Final Judgment and to Modify Injunction Pending Supreme Court Review is **DENIED**.

This the 9th day of February, 2016.

FOR THE COURT:



United States District Judge