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

SANDRA LITTLE COVINGTON, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	1:15CV399
	)	
THE STATE OF NORTH CAROLINA, et al.,	)	
	)	
Defendants.	)	

ORDER

With this lawsuit, filed in May 2015, Plaintiffs, individual North Carolina citizens, challenge the constitutionality of nine state Senate districts and nineteen state House of Representatives districts "as racial gerrymanders in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution." First Am. Compl. ¶ 1, ECF No. 11. Plaintiffs contend that the challenged districts, hatched as part of a 2011 redistricting effort, were the product of "race-based policies adopted by leaders of the General Assembly" and that "traditional districting principles were plainly subjugated to race, resulting in bizarrely shaped and highly non-compact districts." Id. ¶¶ 3, 6.

The challenged districts have been used in two previous election cycles. The primary election for the impending 2016 statewide election is scheduled for March 15, 2016, with the

candidate filing period set to open on December 1, 2015. 2015 N.C. Sess. Laws 258, § 2(a), (b).

On October 7, 2015, Plaintiffs moved for a preliminary injunction, seeking to enjoin all election proceedings in twenty-five of the challenged districts. Plaintiffs then hope to secure a final decision permanently enjoining the use of the 2011 redistricting plan and forcing the North Carolina legislature to redraw the districts in accordance with the United States Constitution.

On November 9, 2015, Defendants moved "this Court to [s]tay, [d]efer, or [a]bstain from further proceedings in this action because parallel litigation involving the same claims and issues raised in Plaintiffs' First Amended Complaint is currently pending before the North Carolina Supreme Court." Defs.' Mot. Abstain 1, ECF No. 31.

On November 23, 2015, this three-judge panel heard argument on Plaintiffs' motion for a preliminary injunction and on Defendants' motion to stay, defer, or abstain. For the reasons explained below, we deny both motions.

I. Abstention

Two groups of plaintiffs filed lawsuits in state court in November 2011 challenging the constitutionality of specific districts in then-new redistricting plans. Those suits challenged many of the legislative districts challenged in this

case. The two state court cases were consolidated and heard by a three-judge state trial court panel that deemed the redistricting plan constitutional. See Dickson v. Rucho, 766 S.E.2d 238, 243–44 (N.C. 2014), cert. granted and judgment vacated, 135 S. Ct. 1843 (2015). The matter was appealed, and the Supreme Court of North Carolina affirmed. Id. at 242. The United States Supreme Court vacated that affirmance in April 2015 and remanded for reconsideration in light of Alabama Legislative Black Caucus v. Alabama, 135 S. Ct. 1257 (2015). Dickson v. Rucho, 135 S. Ct. 1843 (2015) (mem.). Currently, the matter is pending before the Supreme Court of North Carolina.

With their motion to stay, defer, or abstain, Defendants ask this Court to stay out of the fray due to the "parallel" Dickson litigation in state court.

Generally, federal courts have a duty to decide cases over which they have jurisdiction, regardless of whether parallel state proceedings exist: "Federal courts, it was early and famously said, have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.' Jurisdiction existing, this Court has cautioned, a federal court's 'obligation' to hear and decide a case is 'virtually unflagging.' Parallel state-court proceedings do not detract from that obligation." Sprint Commc'ns, Inc. v. Jacobs, 134 S. Ct. 584, 590–91 (2013) (citations omitted).

Nevertheless, the Supreme Court has endorsed staying redistricting cases under certain circumstances. Defendants argue that two such cases, Scott v. Germano, 381 U.S. 407 (1965) (per curiam), and Growe v. Emison, 507 U.S. 25 (1993), support our refraining from adjudicating this case in favor of the state court litigation. Those cases, however, do not further Defendants' cause.

In Germano and Growe, the states were actively working to remedy what had been determined to be unlawful redistricting plans. Germano, 381 U.S. at 408; Growe, 507 U.S. at 29–31. Indeed, those cases make clear that deferral is not appropriate to the extent it appears that "the[] state branches will fail timely to perform [their] duty" to "adopt a constitutional plan 'within ample time . . . to be utilized in the upcoming election.'" Growe, 507 U.S. at 34–35 (citing Germano, 381 U.S. at 409). In such cases, "the District Court would [be] justified in adopting its own plan." Id. at 36.

Here, by contrast, the state court proceeding has not even determined that any remediation is required. Rather, the state court rulings in Dickson thus far have upheld the redistricting plan that Plaintiffs claim is unconstitutional. Further, the Dickson cases have been litigated for several years, and to this day they remain unresolved, with the Supreme Court of North Carolina's prior opinion having been vacated by the United

States Supreme Court. Under these circumstances, we see nothing in either Germano or Growe that inclines us to stay our hand in favor of Dickson.

Defendants also contend that "one or more of the Plaintiffs in this action may be bound by the judgment in Dickson under the doctrines of res judicata (claim preclusion) or collateral estoppel (issue preclusion)." Defs.' Mem. Supp. Mot. Abstain 12, ECF No. 32. For this reason, too, Defendants argue this Court should stay its hand until the Dickson litigation is resolved. Here again, Defendants' arguments are unconvincing.

"Fundamentally, under both res judicata and collateral estoppel, a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit **between the same parties or their privies**." 47 Am. Jur. 2d Judgments § 464 (emphasis added); see also Aliff v. Joy Mfg. Co., 914 F.2d 39, 42 (4th Cir. 1990); Parker v. United States, 114 F.2d 330, 333 (4th Cir. 1940). The reasoning behind these doctrines "is straightforward: Once a court has decided an issue, it is forever settled as **between the parties**, thereby protecting against the expense and vexation attending multiple lawsuits, conserving judicial resources, and fostering reliance on judicial action by minimizing the possibility of inconsistent verdicts. In short, a losing litigant deserves no rematch after

a defeat fairly suffered." B&B Hardware, Inc. v. Hargis Indus., Inc., 135 S. Ct. 1293, 1302–03 (2015) (quotation marks, citations, and brackets omitted) (emphasis added).

Defendants claim only that they "may be able to show, following discovery, that the interests of the plaintiffs in this litigation were aligned with and represented by the plaintiffs in Dickson, particularly if any of the Plaintiffs here are members of any of [the] organizations that are plaintiffs in Dickson." Defs.' Mem. Supp. Mot. Abstain 13. Yet they are unable to say today that a ruling in Dickson would have preclusive effect against any Plaintiff in this case. Their preclusion argument thus provides no basis for staying or abstaining here.

Finally, Defendants contend that Younger v. Harris, 401 U.S. 37 (1971), applies and provides a vehicle for this Court to stay out of the fray. However we fail to see how Younger applies here.

The Supreme Court recently made plain that Younger's scope is limited to precluding three "exceptional categories" of lawsuits: 1) "federal intrusion into ongoing state criminal prosecutions;" 2) "certain civil enforcement proceedings;" and 3) "interfering with pending civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." Sprint Commc'ns,

Inc., 134 S. Ct. at 591 (quotation marks, citations, and brackets omitted) (emphasis added).

This case implicates nothing that is criminal or quasi-criminal, nor does it deal with the state judiciary's enforcement of its own power. Rather, it is a garden variety case of the judiciary reviewing legislative action (redistricting), a category of cases to which Younger has never applied and does not apply. Id.; see also New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 368 (1989) (noting that "it has never been suggested that Younger requires abstention in deference to a state judicial proceeding reviewing legislative or executive action").

Defendants have provided no basis for this Court to stray from its "virtually unflagging" duty to adjudicate the case before it. Sprint Commc'ns, Inc., 134 S. Ct. at 591. Their motion to stay, defer, or abstain is therefore denied.

II. Preliminary Injunction

Plaintiffs have moved for a preliminary injunction seeking to enjoin election proceedings for nine North Carolina Senate Districts and sixteen North Carolina House districts until a final determination on the merits in this case.

A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. Nat. Res. Def. Council,

Inc., 555 U.S. 7, 22 (2008). To prevail in their preliminary injunction motion, Plaintiffs must demonstrate that (1) they are likely to succeed on the merits; (2) they will likely suffer irreparable harm absent an injunction; (3) the balance of equities weighs in their favor; and (4) the injunction is in the public interest. Id. at 20. When it is clear that the balance of the equities and public interest do not tip in favor of granting preliminary relief, the injunction cannot issue and it is "not necessary" to reach the merits. Id. at 23–24, 31.

In assessing the equities, "courts must balance the competing claims of injury" and "the effect on each party of the granting or withholding of the requested relief." Id. at 24 (quotation marks omitted). And in weighing the public interest, we must consider "the public consequences in employing the extraordinary remedy of injunction." Id. (quotation marks omitted). In the context of redistricting, the Supreme Court has advised that the "proximity of a forthcoming election and the mechanics and complexities of state election laws" are particularly relevant when determining whether to grant injunctive relief. Reynolds v. Sims, 377 U.S. 533, 585 (1964).

Here, Plaintiffs request preliminary relief that would cause an extraordinary disruption to North Carolina's 2016 election cycle. Candidate filing for the North Carolina House and Senate contests opens on December 1, 2015, and primary

elections are scheduled for March 15, 2016. See 2015 N.C. Sess. Laws. 258, § 2(a), (b). Given that trial in this case is scheduled for April 2016, enjoining election proceedings until after trial and a final decision on the merits, as Plaintiffs request, would make it impossible for the state to hold its primary elections as scheduled. Further, while Plaintiffs challenge the constitutionality of a few dozen districts, the 2016 election cycle includes contests for 170 Senate and House seats. Defs.' Resp. to Mot. Prelim. Inj. Ex. 23, Strach Decl. ¶ 4, ECF No. 33-30. And Plaintiffs concede that, for all practical purposes, enjoining filing for the challenged districts would have the collateral effect of delaying the election cycle for all Senate and House seats and likely result in primaries in July 2016 at the earliest.

Plaintiffs counter that any disruption to the state's election cycle is far outweighed by the constitutional injury caused by districts that are the product of impermissible racial gerrymandering. While the Court takes seriously the constitutional injury Plaintiffs stand to suffer if they ultimately succeed in proving their claim, "a federal court cannot lightly interfere with or enjoin a state election" either. Sw. Voter Registration Educ. Project v. Shelley, 344 F.3d 914, 918 (9th Cir. 2003) (en banc) (per curiam). At this preliminary stage, before we have reached a final decision on

the merits, we therefore do not find Plaintiffs' requested relief to be in the public interest.

Moreover, although Plaintiffs filed their initial complaint in May 2015, Plaintiffs waited until October 2015, nearly five months later, to move for a preliminary injunction. Plaintiffs admit that this was a strategic decision. Now, less than a week from the opening of candidate filing, their decision will exacerbate the disruption to the election cycle that a preliminary injunction would cause. See Quince Orchard Valley Citizens Ass'n, Inc. v. Hodel, 872 F.2d 75, 79–80 (4th Cir. 1989) (explaining that plaintiff's own delay is relevant in balancing the potential harms caused by preliminary injunction).

For these reasons, we conclude that Plaintiffs have failed to demonstrate that they are entitled to a preliminary injunction. Accordingly, we need not reach the merits of their claim. We nevertheless underscore that, while denying Plaintiffs relief at this time, we do not suggest that Plaintiffs will not succeed in proving their case at trial. We hold only that the balance of the equities and the public interest do not tip in their favor for the granting of a preliminary injunction at this juncture. Thus, Plaintiffs' motion for preliminary injunction is hereby denied.

SO ORDERED.

For the Court:

/s/ James A. Wynn, Jr.
United States Circuit Judge

/s/ Thomas D. Schroeder
United States District Judge

/s/ Catherine C. Eagles
United States District Judge