UNITED STATES DISTRICT COURT
OF THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MARJORIE TAYLOR GREENE, an individual, *Plaintiff*, *v.* **MR. BRAD RAFFENSPERGER**, in his official capacity as Georgia Secretary of State, et al., *Defendants*, and David Rowan, *et al.*, *Intervenor Defendants.*	**Civ. No. 1:22-cv-01294-AT**

Plaintiff's Reply in Support of Motion to Stay

Intervenors argue that a stay should be denied because Representative Marjorie Taylor Greene ("**Rep. Greene**") does not make a case of "hardship or inequity." Intervenors' Resp. Mot. to Stay, D. 66 at 4. However, Intervenors cite to the wrong legal standard. They further argue that a stay is inappropriate as they will be unable to conduct discovery as "memories may fade; witness may die or

disappear; documents may be deleted or lost; and events may lose their perspective." *Id.* at 4-5. Discovery is entirely inappropriate in this instant case as there are no facts necessary for the disposition of this case.

Discussion

Legal Standard

Intervenors argue that a party seeking a stay must "make a clear case of hardship or inequity." *Id.* at 4. (citing *Landis v. North Am. Co.*, 299 U.S. 248, 255 (1936). Intervenors cite to two different cases for that. However, their citation is lacking the context of both cases.

In both cases cited, this showing of hardship or inequity was required to stay a proceeding until a *separate* litigation could be completed. "[T]he suppliant for a stay must make 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 someone else. Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in *another* settles the rule of law that will define the rights of both." *Landis*, 299 U.S. at 255. (emphasis added). "When ruling on a motion to stay pending the *resolution of a related case in another forum*, district courts must consider both the scope of the stay and the reasons given for the stay." *Sturgis Motorcycle Rally, Inc. v. Mortimer*, 2015 WL

11439078 at *6 (N.D.Ga June 11, 2015) (quoting *Lipford v. Carnival Corp.,* 346 F.Supp. 2d 1276, 1278 (N.D. Ga. 2004) (emphasis added).

The cases cited by Intervenors stand for the proposition that a showing of hardship or inequity is required only when the stay is *pending the resolution of a related case in another forum*. *See Landis*, 299 U.S. at 255 (denying request for stay pending determination by Supreme Court in separate litigation). *See also Sturgis Motorcycle Rally, Inc.,* 2015 WL 11439078 (denying motion to stay pending resolution of South Dakota case).

The correct legal standard is that cited in Rep. Greene's Motion to Stay. *See* Pls. Mot. to Stay, D. 65 at 3. Courts generally consider the following factors: (1) whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant; (2) whether a stay will simplify the issues in the case; and (3) whether discovery is complete and a trial date has been set. *Tomco Equip. Co. v. Se. Agri-Sys., Inc.*, 542 F.Supp. 2d 1303, 1307 (N.D. Ga. 2008). Intervenors have been unable to refute how all factors weigh in favor of granting the stay.

I. Intervenors face no undue prejudice or disadvantage.

Intervenors argue that the possible prejudice or disadvantage they face from a possible stay "is obvious." Intervenors' Resp. Mot. to Stay at 4. This "obvious" prejudice is the "potential" for various "unknown" memories, witness, documents,

and events to be lost or deleted, while waiting for an *expedited* appeal to finish. Intervenors state that these are "necessary to support their defenses." However, every one of their affirmative defenses require no discovery to support. Each defense is entirely a legal one. *See* Intervenors' Answer, D. 59 at 7. (Arguing failure to state a claim for relief, lack of subject-matter jurisdiction, no private right of action under the Amnesty Act and 1983, and claims are not ripe).

Next, Intervenors try to argue that various allegations in Rep. Greene's complaint must be resolved through discovery. Intervenors' Resp. to Mot. to Stay at 5. However, each allegation cited does not require a factual finding.

> ¶ 1: Describing the action; ¶ 3: Legal Conclusion; ¶ 4: Legal Conclusion; ¶ 5: Legal Conclusion; ¶ 7: Legal Conclusion; ¶ 8: Legal Conclusion; ¶ 13: Description of parties; ¶ 15: Legal Conclusion; ¶ 16: Legal Conclusion; ¶ 20: Legal Conclusion; ¶ 22: Legal Conclusion; ¶ 23: Legal Conclusion; ¶ 30: Admitted by Intervenors; ¶ 34: Admitted by Intervenors; ¶ 35: Admitted by Intervenors; ¶ 36: Factual assertion not relevant to this litigation; ¶ 37: Factual assertion not relevant to this litigation; ¶ 41: Legal Conclusion; ¶ 46: Legal Conclusion; ¶ 52: Legal Conclusion; ¶ 53: Legal Conclusion; ¶ 57: Legal Conclusion; ¶ 59: Legal Conclusion; ¶ 60: Legal Conclusion; ¶ 61: Legal Conclusion; ¶ 63: Legal Conclusion; ¶ 65: Legal Conclusion; ¶ 67: Legal Conclusion; ¶ 69: Legal Conclusion; ¶ 70: Legal Conclusion; ¶ 71: Legal Conclusion; ¶ 73: Legal Conclusion; ¶ 75: Legal Conclusion; ¶ 76: Legal Conclusion; ¶ 77: Legal Conclusion.

See Pls. Verified Complaint, D. 3.

Every allegation that intervenors argue necessitates discovery is either a legal conclusion, admitted, irrelevant to the litigation, or has already been

stipulated to by the parties. *See* Stipulation of Facts, D. 38. Further, Intervenors' themselves acknowledge the unlikeliness of prejudice as "[b]riefing in [the] appeal in the Eleventh Circuit is almost finished." Intervenors Resp. to Mot. to Stay at 5. Further, the "fears" that Intervenors complain of, are unlikely to occur "as [the] appeal in the Eleventh Circuit is almost finished." *Id.*

Discovery has already been conducted to some extent in the state administrative proceedings. Not only that, but the OSAH conducted an eight-hour hearing. In that hearing, Rep. Greene testified for nearly three hours, and the Intervenors were permitted to examine her on the stand.[1]

Thus, Intervenors face no undue prejudice or disadvantage.

II. A stay will simplify the issues in question and streamline the trial.

Intervenors argue that Rep. Greene does not explain how a stay would simplify the issues and streamline the trial. *Id.* at 6. That argument is without merit as Rep. Green argued these principles in her motion. Firstly, a stay pending the resolution of appeal will narrow the issues pending and assist in the determination of the questions of law. Secondly, it will reduce the burden of litigation and

[1]Intervenors have argued in the state appeal that the OSAH ALJ erred in not allowing certain types of factual discovery, but in their own words, "[t]he appeal in state court is moving slowly." Intervenors' Resp. to Mot to Stay at 5. Thus, the proper venue for determination of relevant factual and discovery questions, the state appellate process, is, in the words of Intervenors, not moving fast enough.

promote judicial economy. Finally, this case is at an early stage of litigation in comparison to the litigation in the Eleventh Circuit. *See* Pls. Mot. to Stay at 4-6.

Intervenors argue that "[o]nly discovery is likely" to simplify the issues and streamline the trial. Intervenors Resp. to Mot. to Stay at 6. This is not only false, but the complete opposite of what is likely to occur through the discovery. While the cost of discovery is a regular expense of litigation, it is a cost that the Court keeps a close eye on. *See* Fed. R. Civ. Pro. 26-37 (Limits and rules governing discovery). When discovery is unnecessary for the disposition of a case, it becomes an unnecessary and inefficient use of the parties' resources, in contravention of judicial economy and the federal rules. Fed. R. Civ. Pro. 1. ("These rules . . . should be construed, administered, and employed by the court and the parties to secure the just, speed, and inexpensive determination of every action and proceeding.")

Discovery is not necessary in this case. *See* Part I. It is not needed for this Court to make a determination on any issue presented. As such, discovery would overly complicate the issues and trial, promote the inefficient use of judicial economy, and increase the burden and expenses of all parties involved.

Conclusion

In order to preserve judicial and party resources, and to promote the most

efficient resolution of this case, Rep. Green asks this Court to stay all proceedings until 35 days after Rep. Greene's federal appeal is complete.

Dated: June 3, 2022

Respectfully Submitted,

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Certificate of Compliance

The undersigned counsel certifies that the foregoing has been prepared in Times New Roman (14 point) font, as required by the Court in Local Rule 5.1(B).

Respectfully submitted on June 3, 2022.

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