

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHIGAN WELFARE RIGHTS ORGANIZATION, et al.,	.	
	.	
Plaintiffs,	.	CA No. 20-3388 (TSC)
	.	
v.	.	
	.	Washington, D.C.
DONALD J. TRUMP, et al.,	.	Wednesday, November 29, 2023
	.	2:34 p.m.
Defendants.	.	
.....	.	

TRANSCRIPT OF STATUS HEARING
BEFORE THE HONORABLE TANYA S. CHUTKAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

(Via Videoconference)

THE DEPUTY CLERK: Your Honor, this is civil action 20-3388, Michigan Welfare Rights Organization, et al., versus Donald J. Trump, et al. Will Counsel please state your appearances for the record, starting with the plaintiffs.

MR. BRADFORD: Jason Bradford, from Jenner & Block, for plaintiffs.

MR. ENFIELD: Jonathan Enfield, from Jenner & Block, for plaintiffs.

MR. HATTEN: Christian Hatten, from Jenner & Block, for plaintiffs.

MS. THATTE: Anuja Thatte, from the Legal Defense Fund, for plaintiffs.

MR. SPITAL: Samuel Spital, from the Legal Defense Fund, for plaintiffs.

THE COURT: All right. Good afternoon.

And for the defense?

MR. BINNALL: Good afternoon, Your Honor. Jesse Binnall, from the Binnall Law Group, on behalf of President Trump and Donald J. Trump for President, Inc. That's the 2020 Trump campaign.

MR. WOODFIN: And Conor Woodfin for the Republican National Committee.

THE COURT: I'm sorry. Who was that for the RNC?

1 MR. WOODFIN: Conor Woodfin.

2 THE COURT: Oh, Mr. Woodfin. I have a list of names
3 I was just going down. Okay. Anybody else?

4 MR. WARRINGTON: Your Honor, David Warrington for the
5 RNC, but Mr. Woodfin is handling the matter today.

6 THE COURT: All right. Thank you all.

7 After somewhat of a bouncing around, you've landed with me,
8 for better or worse. I understand Judge Reyes had a conflict.
9 This case was originally with Judge Sullivan. So we're here
10 for a status conference. Let me begin by reviewing my
11 understanding of the posture and history of the case.

12 The complaint was filed in late November 2020 and first
13 assigned to Judge Sullivan.

14 A month later, plaintiffs filed their amended complaint
15 which asserted violations of Section 11(b) of the Voting
16 Rights Act and 48 U.S.C. § 1985, which is known as the Ku Klux
17 Klan Act, and the complaint was based on conduct alleged to
18 have occurred throughout the country concerning the 2020
19 presidential election. Plaintiffs are seeking injunctive
20 relief and monetary damages.

21 In February 2021, the RNC filed a motion to transfer venue,
22 seeking transfer to the Eastern District of Michigan, and the
23 Trump defendants, which I'll call them, moved to join that
24 motion. In late February of 2021, both RNC and the Trump
25 defendants filed their respective motions to dismiss, ECF Nos.

1 24 and 25.

2 Judge Sullivan issued his order and accompanying opinion
3 in late March or early April of 2022, denying defendants'
4 motion to transfer venue. He also granted in part and held
5 in abeyance in part defendants' motions to dismiss.
6 Specifically, he dismissed plaintiffs' claim under Section
7 11(b) of the Voting Rights Act and held in abeyance their
8 claim under 42 U.S.C. § 1985(3).

9 In May 2022, plaintiffs filed a motion to clarify the
10 court's order and opinion, asking the court to confirm that
11 plaintiffs had leave to file a second amended complaint to
12 their Section 11(b) claim and to further clarify that they
13 could wait to file that -- or that they should wait to file
14 that amended complaint until after they had the benefit of
15 the court's ruling under the 42 U.S.C. § 1985(3) claim.

16 On June 10th of last year, the court issued a minute order
17 denying plaintiffs' motion, but setting a briefing schedule
18 to the extent that plaintiffs sought leave to file a second
19 amended complaint. The court also declined to rule on the
20 pending motions to dismiss as to plaintiffs' Section 1985(3)
21 claim before considering the motion for leave to file an
22 amended complaint.

23 Shortly thereafter, on June 16, 2022, plaintiffs' moved
24 for leave to file their second amended complaint, which the
25 defendant opposed.

1 On November 28, 2022, the court granted plaintiffs' motion
2 to amend and found as moot the portions of defendants' motion
3 to dismiss that were held in abeyance. And that was ECF 59.

4 Two days later, counsel for Trump defendants notified
5 the court that Mr. Trump had appealed to the D.C. Circuit on
6 the grounds that this court denied his assertion of absolute
7 immunity. And that is United States Court of Appeals case
8 No. 22-7164.

9 On December 12, 2022, the Trump defendants moved to stay
10 all pretrial proceedings, including discovery, until resolution
11 of Mr. Trump's immunity claim before the court of appeals.
12 The RNC filed a notice to join this motion shortly thereafter.

13 The following week, plaintiffs filed a cross-motion to
14 commence pre-answer discovery and an opposition to defendants'
15 motion to stay; and in early January of this year, both RNC
16 and the Trump defendants filed their respective motions to
17 dismiss plaintiffs' second amended complaint, and those are
18 ECF Nos. 71 and 72.

19 In late January 2023, the D.C. Circuit issued an order in
20 22-7164, holding the case in abeyance pending further order
21 of the court, and stating that the parties were directed to
22 file motions to govern further proceedings within 30 days of
23 either the court's disposition of the appeals consolidated
24 under *Blassingame v. Trump* or the district court's disposition
25 of defendants' pending motions to dismiss the second amended

1 complaint, whichever occurred first.

2 As of today, the D.C. Circuit has not yet issued an opinion
3 in *Blassingame*, and this court – meaning now me – has not yet
4 disposed of defendants' motion to dismiss. Well, that's as of
5 January 2023, so that would have been Judge Sullivan.

6 The case was then directly reassigned to Judge Reyes in
7 late February 2023. Seven months later, plaintiffs moved for
8 a status conference to discuss the status of the case and the
9 pending motions. They indicated that since their first
10 complaint was filed in November 2020, discovery had not
11 proceeded because Local Civil Rule 16.3(b) exempts from
12 discovery cases in which no answer has been filed.

13 Plaintiffs also asserted that they should be permitted to
14 commence discovery because discovery's crucial to obtaining
15 injunctive relief to avoid irreparable injury to voters and
16 other plaintiffs in advance of the 2024 election.

17 By minute order, Judge Reyes granted the motion and
18 scheduled a status conference for October 12th of this year.
19 The minute order also asked the parties to be prepared to
20 address whether the court has jurisdiction to act in this
21 case given the pending appeal.

22 The case was then randomly assigned to me in early October,
23 and I vacated the October 12th status conference. And then
24 after contacting counsel by email, we rescheduled to today's
25 hearing.

1 Last week, on November 22, plaintiffs filed a status
2 report in advance of today's hearing, and that is ECF No. 87,
3 regarding the current posture of the case and the pending
4 motions.

5 And so it looks like, given plaintiffs' status report,
6 there are a couple of outstanding motions remaining, which
7 I see as the Trump defendants' motion to stay, which is ECF
8 No. 66; the one by the RNC, No. ECF 67; plaintiffs'
9 cross-motion to commence discovery, ECF No. 68; and both the
10 RNC and the Trump defendants' motions to dismiss plaintiffs'
11 second amended complaint, which are ECF Nos. 71 and 72.

12 Does that comport with your understanding of what motions
13 are still outstanding?

14 MR. BRADFORD: Yes, Your Honor, it does.

15 THE COURT: And from the defense side? Any objection
16 to that listing?

17 MR. BINNALL: We believe that's accurate.

18 THE COURT: Okay. Now, so obviously we still don't
19 have a ruling in *Blassingame*. I'm hoping we will, for many
20 reasons; but I don't control the court of appeals, I can tell
21 you that. But anyway, let me first ask you, returning to
22 Judge Reyes' minute order, what are the parties' positions
23 on whether I even have jurisdiction to act, given the pending
24 appeal? And I'll hear first from the plaintiffs.

25 MR. BRADFORD: Your Honor, on the jurisdictional

1 question, there is one point of clarification I want to add
2 to on the recitation of the facts, which I think was accurate.
3 The only clarity I wanted to add is that I think that the
4 appellate court, the reference to the case is -- the reference
5 to the appeal was held in abeyance not this particular -- not
6 the underlying district court matter. As to jurisdiction --

7 THE COURT: So the appeal from -- the appeal of this
8 case was held in abeyance pending resolution of *Blassingame*.
9 Is that what you're saying?

10 MR. BRADFORD: Correct. In fact, the court's order
11 expressly contemplated that this court may rule on the motion
12 to dismiss while it was considering the *Blassingame* appeal.

13 THE COURT: So your position is that I should go ahead
14 and rule -- is it your position that I have jurisdiction to
15 rule on the motions to dismiss, and I should go ahead and rule
16 on them notwithstanding the fact that we don't have the
17 decision in *Blassingame* -- my question is, is there any point
18 to it given that the court of appeals' decision in *Blassingame*
19 is going to have some significant effect on this case? So why
20 shouldn't I wait?

21 MR. BRADFORD: Your Honor, the only issue that's on
22 appeal is President Trump's narrow claim to immunity to the
23 civil damages question. It's established in the *Coinbase*
24 decision, the Supreme Court's *Coinbase* decision earlier this
25 year, that an appeal divests the district court of jurisdiction

1 only over the aspects of the case involved in the appeal.
2 President Trump's claim was is that he is immune from money
3 damages relief that we seek in our KKK Act claim. There's a
4 Voting Rights Act --

5 THE COURT: Let me stop you a minute, Mr. Bradford.
6 So I guess the answer to my first question is, yes, I continue
7 to have jurisdiction; yes, I can rule on the motion; yes, I
8 should because you can still seek discovery with regard to the
9 claim for injunctive relief?

10 MR. BRADFORD: That's correct, Your Honor.

11 THE COURT: But wouldn't that sort of cause unnecessary
12 duplication of discovery? Because say you go forward with
13 discovery related to the claim for injunctive relief; the
14 court of appeals rules in *Blassingame* and, just for the
15 purposes of argument, denies immunity, which would then allow
16 you to seek money damages. Then you'd have to go back and get
17 additional discovery. Wouldn't it be more efficacious just to
18 wait and do -- you know, rather than do discovery twice,
19 conduct discovery twice?

20 MR. BRADFORD: Understood, Your Honor. And I don't
21 think that that's the case here, because the discovery --
22 the operative facts supporting the KKK Act claim and the
23 Voting Rights Act claim are the same.

24 So the discovery we'd be seeking, there's no additional
25 discovery that plaintiffs would be seeking independently for

1 the KKK Act claim than it would be under the Voting Rights Act
2 claim. To the extent there's anything that we do identify
3 that narrowly relates only to the KKK Act claim, that's going
4 to be a very narrow subset of materials.

5 And given the pending election, which is now less than a
6 year away, under which, you know, Judge Sullivan, in granting
7 the plaintiffs' relief to file their second amended complaint
8 already held do suffer injury and do have standing, we're
9 getting to a narrower gap of time under which plaintiffs would
10 be able to seek relief or obtain relief on the injunction
11 they're seeking under the Voting Rights Act claim. There's no
12 duplicative discovery here. And no matter how the court of
13 appeals rules, plaintiffs would be able to proceed in
14 obtaining that discovery on the Voting Rights Act claim.
15 There's no reason to delay that now.

16 THE COURT: What about the motions to dismiss, though?
17 It would seem to me the court has to rule on the motion to
18 dismiss, and then you commence discovery. Right?

19 MR. BRADFORD: Understood, Your Honor. And that's a
20 function of the local rule where we say that you have
21 discretion to grant discovery where it's warranted. Here,
22 you know -- you know, those motions to dismiss at this point
23 have been pending and fully briefed since January. We
24 understand that there was a lot of shifting amongst -- you
25 know, with Judge Reyes recusing herself, the case being

1 reassigned to her initially and then being reassigned to
2 yourself, and --

3 THE COURT: Well, I've got, you know, lots of time on
4 my hands. I can definitely get to it.

5 (Laughter)

6 MR. BRADFORD: That's what I've read in the news,
7 Your Honor, that there's nothing significant on your plate
8 these days.

9 THE COURT: All my cases are significant. No, I
10 understand that that motion has been pending for almost
11 a year.

12 MR. BRADFORD: And if Your Honor is inclined to -- has
13 questions concerning the motions to dismiss, wants arguments
14 on the motions to dismiss, those are all things that we'd be
15 happy to address or schedule a time for a hearing on. But in
16 the meantime, what we're seeking now is the ability to
17 commence discovery.

18 You know, Rule 16.1 is somewhat unique in this court,
19 and I know it to be derived from the fact that much of this
20 court's civil docket is based on administrative law, where
21 there's a full record in front of the court for a substantial
22 portion of its cases. Here that's not the case. And there's
23 good reason and good cause, as we've outlined in our brief,
24 for why discovery should commence now, particularly as time
25 goes on and we've gotten closer to the 2024 election.

1 If you had asked me that question, you know, a year ago,
2 or even 18 months ago, I think that, you know, there might be
3 room for delay. But as this election gets closer and closer,
4 the need to commence discovery at this point and the prejudice
5 to plaintiffs in their inability to gain injunctive relief in
6 the interim is extremely prejudicial here.

7 THE COURT: All right. Who will be -- Mr. Binnall and
8 Mr. Woodfin, either of you want to address these arguments?
9 What's your proposal for going forward? Do you agree that I
10 have jurisdiction to decide the motions to dismiss and that
11 that should take place before discovery? What's your position
12 here?

13 MR. BINNALL: Well, certainly it's our position that
14 there should be no pre-answer discovery or discovery before
15 the motions to dismiss are decided, Your Honor. But in
16 addition to that, we do not think it is appropriate for
17 discovery -- or for this case to proceed at all until the
18 court of appeals makes its decision in *Blassingame*.

19 THE COURT: What's your response to Mr. Bradford's
20 argument that the court of appeals' decision in *Blassingame*
21 will just affect one aspect of this case and that the court of
22 appeals' decision to hold the appeal in this case in abeyance
23 means that I can go ahead and decide the motions, at least
24 maybe not with regards to the immunity issue since that will
25 be affected by the court of appeals decision?

1 This case is old, and not necessarily as a result of
2 anyone's fault, but I'm the third judge to have it. And
3 there's an election coming up, and sort of time is becoming
4 of the essence.

5 MR. BINNALL: Yes, Your Honor.

6 THE COURT: How are you prejudiced if I go ahead and
7 rule on the motion?

8 MR. BINNALL: Well, first of all, any burdens of
9 litigation is in the Supreme Court and the *Mitchell v. Forsyth*
10 case, what they discuss as far as staying proceedings in the
11 district court while an immunity claim is resolved. Now, I do
12 understand the immunity --

13 THE COURT: I'm going to interrupt you for a minute.
14 I could understand the burdens attendant in litigation if I
15 were allowing discovery to commence, because that's going to
16 cause you all work and expense and time and so on. But me
17 ruling on the motions to dismiss, how does that burden you?

18 MR. BINNALL: Well, ostensibly, there's going to be --
19 if there was argument, that would certainly be a burden of
20 litigation, and we are certainly not waiving any argument that
21 we may be giving in this case on the motion to dismiss. These
22 are very important constitutional issues that we do think call
23 out for argument. It's just that they call out for argument
24 at the appropriate time.

25 On top of that, there is the mechanical issue here.

1 The *Blassingame* case does primarily deal with immunity,
2 specifically deals with immunity. But when the court of
3 appeals -- when the circuit reached out to get the position of
4 the Department of Justice, the Department of Justice raised
5 some very important First Amendment issues and how those First
6 Amendment issues may very well play in an immunity analysis.
7 That is going to weigh heavily in this case as well.

8 So there are mechanical reasons, logistical reasons,
9 judicial-efficiency reasons why it makes more sense for this
10 court to wait until the *Blassingame* decision comes out before
11 it actually --

12 THE COURT: But -- and again -- I hate to interrupt
13 you, but again, I don't have any control or any idea when that
14 decision is going to come out. And it's been pending for a
15 long time. At a certain point, a failure to decide means that
16 it effectively denies the plaintiffs their remedy.

17 Their remedy is they're seeking injunctive relief to
18 prevent what they allege are the problems that arose in the
19 2020 election; and the 2024 election is staring us in the
20 face. Holding this in abeyance and continuing not to act
21 is actually going to deny them the relief that they seek,
22 effectively, by not resolving their claims. That's a problem.

23 And again, I'm not -- it doesn't sound like you're saying
24 I'm divested of jurisdiction. It doesn't sound like you're
25 saying I don't have the jurisdiction to act. It sounds like

1 what you're saying is I shouldn't act.

2 MR. BINNALL: No, Your Honor. I'm saying both.

3 I'm saying that because you're divested of jurisdiction on
4 the immunity question, that the immunity question overlaps
5 with everything in this case.

6 THE COURT: Wait, wait. How am I divested of
7 jurisdiction of the immunity claim? Did the court of appeals
8 say that? I mean, obviously, it doesn't make sense. I
9 shouldn't because the issue is pending before the court
10 of appeals, but -- I mean I'm not -- I'm allowed to act.
11 I mean, is there an order or something divesting me of
12 jurisdiction on that issue?

13 MR. BINNALL: No, Your Honor. There is not an order
14 divesting this court of jurisdiction, but there is the very
15 clear Supreme Court case law that says that while there's an
16 immunity question pending, that until that threshold immunity
17 question is resolved, discovery should not be allowed. And
18 also --

19 THE COURT: But -- I know that rule. But that's not
20 in this case. In other words, in *Blassingame* the immunity
21 question is on appeal, right? So obviously the lower court
22 in *Blassingame* is divested of jurisdiction while that issue
23 is on appeal. Right?

24 MR. BINNALL: And it's on appeal in this case as well.

25 THE COURT: It is, but the appellate court in this

1 case, if I'm understanding what Mr. Bradford said, did not --
2 in other words, it stayed its appeal. So it's different from
3 *Blassingame* because the court of appeals in this court stayed
4 its appeal, thus enabling me, should I choose to, to rule on
5 the motions to dismiss. Or am I wrong on the procedure there?

6 MR. BINNALL: I would just say that the fact that the
7 circuit in holding in abeyance the appeal has not in any way
8 changed the procedural posture so that the threshold immunity
9 issue has to be resolved before going further. That's a rule
10 of law that's -- that has Supreme Court precedent. It is
11 Supreme Court precedent in a number of different cases. So
12 that is it's held in abeyance just for judicial efficiency's
13 sake for the court to make the ruling in *Blassingame* and then
14 decide how it affects these other cases doesn't change the
15 fact that these matters should be stayed until that is resolved.

16 THE COURT: Mr. Woodfin, did you want to be heard?

17 MR. WOODFIN: Yes. Thank you, Your Honor.

18 Our position is that you do have jurisdiction to rule
19 on the motion to dismiss, but that beginning discovery is
20 inappropriate. To begin discovery would require two conditions:
21 both that the immunity appeal is finally resolved and that you
22 either rule on the motion to dismiss or that you find that you
23 grant the plaintiffs' motion to commence discovery and deviate
24 from the local rules. We explained why you shouldn't do that,
25 why they don't meet that standard, in our response to their

1 motion to compel. But we think that both of those conditions
2 must be satisfied before discovery is to commence.

3 THE COURT: I think you make a good point, Mr. Woodfin.
4 But I do understand the sort of limbo we're being held in, and
5 time is going by. And I have the concern that I'm sure
6 Mr. Bradford has, that the more time that passes, the less
7 likely the plaintiffs will be able to even -- should their
8 case -- should the case be decided in their favor be even able
9 to fashion injunctive relief, or any injunctive relief they
10 get may not be effective because of where we are in the process.

11 I'm going to take another look at the record. I hate to
12 kick this can any further down the road, but I'm not going to
13 kick it far. I hope to issue some kind of a scheduling order
14 or some kind of an order saying what we're going to do going
15 forward sometime next week.

16 And I appreciate your calling in and educating and getting
17 yet another judge up to speed on the procedural history of
18 this case. I appreciate it, and I will try and come up with
19 some kind of plan to move this case forward in any way I can
20 given the court of appeals' considering a case that is going
21 to have an effect, small or large, on some of the issues in
22 this case. Is there anything --

23 MR. BINNALL: Your Honor?

24 THE COURT: Yes.

25 MR. BINNALL: Just for the court's information, when

1 it looks at things like timing, there is a couple things that
2 we just want to bring to the court's attention that's
3 forthcoming.

4 THE COURT: Of course.

5 MR. BINNALL: First of all, should the court make a
6 decision on the motion to dismiss, there will be an additional
7 stay issue that will need to be resolved before discovery
8 commences, and that is the ongoing criminal matter that would
9 overlap with the facts in this case.

10 THE COURT: You mean my case?

11 MR. BINNALL: Yes, Your Honor. So that's just
12 something to have on the horizon.

13 THE COURT: I expect that immunity issue to be at least
14 resolved in the lower courts shortly.

15 MR. BINNALL: Well, I'm not necessarily just talking
16 about immunity, Your Honor. I'm talking about ongoing civil
17 litigation when there's a criminal proceeding that's ongoing.

18 THE COURT: There are maybe overlapping facts, but this
19 is not one of these cases, I don't think. At least my review
20 of the docket doesn't lead me to indicate that this is sort of
21 a parallel proceeding. Is it?

22 MR. BINNALL: Your Honor, while it's not a parallel
23 proceeding exactly in such a way as maybe some of the January
24 6 cases are, the allegations that have to do with post-
25 election activities is overlapping in such a way that -- I'm

1 not here to argue that motion right now. I'm just putting it
2 on the Court's radar that that motion would be forthcoming if
3 there's a motion to dismiss. I don't think that --

4 THE COURT: Wait, wait. What motion? A motion to stay
5 pending resolution of the criminal case?

6 MR. BINNALL: Yes, Your Honor. So there's that --

7 THE COURT: I'm just getting motions to stay all over
8 the place. Okay.

9 MR. BINNALL: Yeah. There's going to be a -- it's a
10 different legal issue that of course was not at stake at the
11 time the original motions to stay were filed, of course. And
12 then the second thing is, is we do anticipate shortly filing a
13 motion to disqualify the court, and that will be forthcoming
14 as well.

15 THE COURT: Okay. Do you have any idea -- you mean
16 to recuse or -- when you say to "disqualify," for recusal?

17 MR. BINNALL: Yeah. Well, disqualification under
18 Section 455.

19 THE COURT: Okay. When do you anticipate filing that
20 motion? Because if you're going to -- that seems to me that
21 would be something --

22 MR. BINNALL: Promptly --

23 THE COURT: If you're seeking another judge, that's
24 something that would delay this case even further. Seems that
25 would be something you'd need to tee up pretty soon.

1 MR. BINNALL: We will tee it up soon, Your Honor.

2 We will do that.

3 THE COURT: Okay. All right.

4 MR. BRADFORD: Your Honor, the only thing, if you don't
5 mind, the only thing I would add --

6 THE COURT: I'm having a hard time hearing you,
7 Mr. Bradford.

8 MR. BRADFORD: I'm sorry, Your Honor.

9 You know, I appreciate Your Honor's attention to this
10 matter. We do very much. And I would hope that this wouldn't
11 delay the court's ruling that it indicated that it might
12 provide next week. Counsel for Trump and the Trump campaign
13 has known about Your Honor being assigned to this case now for
14 a very long period of time, and any motion to disqualify
15 should have been brought far sooner, in my opinion.

16 THE COURT: All right. As I said earlier, I recognize
17 this case has been pending for a while, and I'm the third, and
18 maybe not the last -- at least according to defendants' hopes,
19 not the last judge. But I do want to have some progress
20 and perhaps some forward motion if I can because it has been
21 pending for a very long time.

22 But I've listened to your arguments. I appreciate you
23 letting me know that that motion is forthcoming, Mr. Binnall,
24 and I'll try and come up with an order, as I said, next week
25 to set forth at least what it is I think I can accomplish

1 given where we are procedurally. All right? Anything else?

2 All right. Thank you all very much.

3 (Proceedings adjourned at 3:05 p.m.)

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CERTIFICATE

I, BRYAN A. WAYNE, Official Court Reporter, certify that the foregoing pages are a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Bryan A. Wayne
Bryan A. Wayne