

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WILLIAM WHITFORD, GRAHAM ADSIT,
ROGER ANCLAM, WARREN BRAUN,
HANS BREITENMOSE, JUDITH BREY,
BRENT BRIGSON, EMILY BUNTING,
SANDRA CARLSON-KAYE, GUY COSTELLO,
TIMOTHY B. DALEY, MARGARET LESLIE
DEMUTH, DANIEL DIETERICH, MARY LYNNE
DONOHUE, LEAH DUDLEY, JENNIFER ESTRADA,
BARBARA FLOM, HELEN HARRIS,
GAIL HOHENSTEIN, WAYNE JENSEN,
WENDY SUE JOHNSON, MICHAEL LECKER,
ELIZABETH LENTINI, NORAH MCCUE,
JANET MITCHELL, DEBORAH PATEL,
JANE PEDERSEN, NANCY PETULLA,
ROBERT PFUNDHELLER, SARA RAMAKER,
ROSALIE SCHNICK, ALLISON SEATON,
JAMES SEATON, ANN E. STEVNING-ROE,
LINEA SUNDSTROM, MICHAEL SWITZENBAUM,
JEROME WALLACE, DONALD WINTER,
EDWARD WOHL, and ANN WOLFE,

Plaintiffs,

v.

BEVERLY R. GILL, JULIE M. GLANCEY,
ANN S. JACOBS, JODI JENSEN, DEAN KNUDSON,
and MARK L. THOMSEN,

Defendants,

and

THE WISCONSIN STATE ASSEMBLY,

Intervenor-Defendant.

OPINION and ORDER

15-cv-421-jdp

Both plaintiffs and defendants move to dismiss this case in light of *Rucho v. Common Cause*, in which the Supreme Court held that “partisan gerrymandering claims present political questions beyond the reach of the federal courts.” No. 18-422, slip op. (June 27, 2019), at 30.

Two issues remain. First, plaintiffs say that the dismissal should be without prejudice, Dkt. 316; defendants say it should be with prejudice, Dkt. 317. There is no doubt that this case cannot succeed in federal court. But political questions are beyond the jurisdiction of federal courts, *Rucho*, slip op., at 7, and dismissals for lack of jurisdiction are not decisions on the merits, and thus such dismissals are always without prejudice, *Bernstein v. Bankert*, 733 F.3d 190, 224 (7th Cir. 2013). Accordingly, this case will be dismissed without prejudice.

Second, defendants express their intent to seek fees or costs. Statutory costs will be awarded to the defendants as the prevailing party and taxed by the clerk as provided under Rule 54(c)(1). Defendants have until July 15, 2019, to file a brief supporting their entitlement to fees (but not the amount). Plaintiffs have until July 29, 2019, to respond. Each side is limited to 20 pages. The court will set a schedule to determine the amount of fees after it decides whether defendants are entitled to them.

ORDER

IT IS ORDERED that:

1. Plaintiffs' motion to dismiss the case without prejudice, Dkt. 316, is GRANTED. Defendants' motion to dismiss the case with prejudice, Dkt. 317, is DENIED.
2. This case is DISMISSED without prejudice. The clerk of court is directed to enter judgment accordingly.
3. Defendants have until July 15, 2019, to submit a bill of costs to the clerk of court; plaintiffs may file any opposition to the bill of costs by July 29, 2019.
4. Defendants may have until July 15, 2019, to file a motion for fees. Plaintiffs may have until July 29, 2019, to respond.

Entered July 2, 2019.

BY THE COURT:

/s/ _____
KENNETH F. RIPPLE
Circuit Judge

/s/ _____
WILLIAM C. GRIESBACH
District Judge

/s/ _____
JAMES D. PETERSON
District Judge