EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. ET AL.,

Plaintiffs,

-v.-

TRUMP ET AL.,

Defendants

17-CV-5427 (ALC)

ORDER

ANDREW L. CARTER, JR., United States District Judge:

Before the Court is Defendants' motion to stay discovery pending their motion to dismiss Plaintiffs' second amended complaint. For the reasons that follow, the Defendants' motion is GRANTED, and, accordingly, discovery in this matter is STAYED.

BACKGROUND

Plaintiffs are a number of organizations that, on July 18, 2017, filed this action in an attempt to enjoin the operation of the Presidential Advisory Commission on Election Integrity (the "Commission"). *See* Complaint (ECF No. 1); *see also* Second Amended Complaint (ECF No. 66). The President established the Commission pursuant to an executive order issued on May 11, 2017, designating the Vice President and Defendant Kris W. Kobach as Chair and Vice-Chair of the Commission, respectively. *Id.* ¶¶ 36-39. Plaintiffs allege, among other things, that the Commission was founded on a "false and discriminatory premise that Black and Latino voters are more likely to perpetuate voter fraud," and name the President, Vice President, Mr. Kobach, and the Commission as defendants. *Id.* at 2; *id.* ¶¶ 36-39.

Plaintiffs' complaint lists seven (7) counts: (1) Violation of the Fifth Amendment to the United States Constitution; (2) Violation of the Fifteenth Amendment to the United States Constitution; (3) Unauthorized Presidential Action; (4) Violation of the Federal Advisory

Committee Act ("FACA"); (5) Declaratory Judgment; (6) Mandamus; and (7) Administrative Procedure Act. *Id.* ¶¶ 179-254. This boils down to four substantive claims: *first*, that the Commission's creation violates equal protection and substantive due process, because it was motivated by discrimination against voters of color (the "Fifth Amendment Claim"), *id.* ¶¶ 180-83; *second*, for the same reasons, that defendants have violated the Fifteenth Amendment's prohibition on intentional racial discrimination (the "Fifteenth Amendment Claim"), *id.* ¶¶ 203-205; *third*, that the Commission's creation constitutes unauthorized Presidential action that contravenes the will of Congress (the "Separation of Powers Claim"), *id.* ¶¶ 207-209, 213; and, *fourth*, that defendants have violated FACA's requirements that advisory committees be "fairly balanced" and not "inappropriately influenced," *id.* ¶¶ 236-40.

On September 18, 2017, Defendants filed a letter requesting a pre-motion conference regarding their anticipated motion to dismiss the *entirety* of the amended complaint. *See* Letter re: Pre-Motion Conference re: Anticipated Motion to Dismiss ("Pre-Motion Letter") (ECF No. 49). In their letter, Defendants requested permission to file a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), arguing that plaintiffs lack Article III standing and that their complaint fails to state a claim. *Id.*

On the afternoon of October 13, 2017, the Court held an initial pretrial conference and pre-motion conference regarding Defendants' anticipated motion to dismiss. *See* Minute Order (ECF No. 65). A few hours before the conference, Plaintiffs' counsel sent an email to counsel for Defendants requesting a meeting at the courthouse to discuss a discovery schedule. *See* 10/13/17 Email from Merle to Wolfe (ECF No. 67-1). Counsel for defendants replied to Plaintiffs' counsel via email, indicating their position that "discovery is not appropriate during the pendency of [Defendants'] forthcoming motion to dismiss" and that they were willing to

address the issue during the pre-motion conference that afternoon. *See* 10/13/17 Email from Wolfe to Merle (ECF No. 67-2).

At the conference later that afternoon, the Court granted Plaintiffs leave to file a second amended complaint, and set a short briefing schedule for Defendants' motion. *See* Minute Order (ECF No. 65). At the conclusion of the conference, the Court inquired as to whether the parties wished to discuss any other matters. *See* Transcript of Proceedings re: Conference Held on 10/13/2017 at 29 (ECF No. 75). However, neither then nor at any point during the conference did the parties raise the possibility of pursuing discovery at this stage of the litigation.

On October 27, 2017, Plaintiffs submitted a letter requesting that the Court set a scheduling conference pursuant to Fed. R. Civ. P. 16(b)(1)(B), or in the alternative hold a pre-motion conference to discuss Plaintiffs' anticipated motion to compel Defendants to satisfy their obligations under Fed. R. Civ. P. 26(f). *See* Letter re: Scheduling Conference or Pre-Motion Conference Re: Anticipated Motion to Compel ("Pls' Ltr.") (ECF No. 67). Plaintiffs contend that because a motion to dismiss does not automatically stay discovery, Defendants are obligated to, at the least, participate in a discovery conference, short of showing good cause for a stay of discovery. *Id.*

On November 3, 2017, Defendants submitted a letter in response, arguing that discovery would be inappropriate during the pendency of their dispositive motion. *See* Letter re: Response to Letter from Rachel Kleinman and Request for Pre-Motion Conference Re: Anticipated Motion to Stay Discovery ("Defs' Ltr.") (ECF No. 69). They contend that good cause exists for a discovery stay in light of Defendants' "substantial arguments for dismissal," one of which is this Court's alleged lack of subject matter jurisdiction, the minimal anticipated delay in discovery on account of the short briefing schedule, and the "special considerations" applicable to discovery

requests directed at Executive Branch officials. *Id.* The Court construed Defendants' request as a motion to stay discovery, and set a letter briefing schedule. *See* Memo Endorsement (ECF No. 70).

On November 9, 2017, Plaintiffs filed their response, arguing that Defendants have failed to establish good cause for a stay. *See* Letter re: Plaintiffs' Opposition to Defendants' Motion to Stay Discovery ("Pls' Oppo. Ltr.") (ECF No. 73). Plaintiffs contend, that the jurisdictional infirmities that Defendants assert were, among other things, cured by Plaintiffs' second amended complaint, and that their complaint adequately states their claims. *Id.* In their letter, apparently for the first time over the course of this dispute, Plaintiffs narrow the scope of potential discovery during the pendency of the motion to dismiss to document discovery related to: (1) data collection; and (2) use and selection of commission members. *Id.* This discovery would be directed only to Mr. Kobach and the Commission, and therefore would not implicate senior executive officials. *Id.* They also claim that because much of this information has been collected and reviewed in related litigation, such discovery would be minimally burdensome to Defendants. *Id.* They also assert that delaying discovery would harm Plaintiffs in at least two ways: (1) the Commission's ongoing activities continues to adversely affect their constituents' voting rights; and (2) they will be unable to address the Commission's claims that they are not investigating voters. *Id.*

Defendants filed a letter reply on November 13, 2017 in support of the requested stay. *See* Letter re: Defendants' Reply in Support of Motion to Stay Discovery ("Reply Ltr.") (ECF No. 74). Defendants' reply elaborates on the merits of their motion, and further claims that, because the Commission is chaired by the Vice President and the Commission is staffed by the Office of the Vice President, and the Vice President's office has a "strong interest in

'safeguarding the confidentiality of its communications,'" the proposed discovery would be unduly burdensome. *Id.* (quoting *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004)). Defendants further argue that the prejudice that Plaintiffs claim from a lack of discovery does not relate to their ability to respond to Defendants' motion to dismiss, or to defend jurisdiction. *Id.*

DISCUSSION

I. Legal Standard Governing Motion for Stay of Discovery

Where a party seeks to stay discovery, that party must demonstrate "good cause." Fed. R. Civ. P. 26(c); *Negrete v. Citibank, N.A.*, No. 15-CV-7250 (RWS), 2015 WL 8207466, at *1 (S.D.N.Y. Dec. 7, 2015) (citing *Morien v. Munich Reinsurance Am., Inc.*, 270 F.R.D. 65, 66-67 (D. Conn. 2010)). The pendency of a case-dispositive motion to dismiss "is not, in itself, an automatic ground for a stay." *Negrete*, 2015 WL 8207466, at *1. Rather, in assessing a motion to stay discovery, courts examine three factors: "1) whether a defendant has made a strong showing that the plaintiff's claim is unmeritorious, 2) the breadth of discovery and the burden of responding to it, and 3) the risk of unfair prejudice to the party opposing the stay." *Id.* (citing *Morien*, 270 F.R.D. at 67). The movant bears the burden as to all three factors. *See Mirra v. Jordan*, No. 15-CV-4100 (AT)(KNF), 2016 WL 889559, at *2 (S.D.N.Y. Mar. 1, 2016) (declining to shift burden to Plaintiff to show prejudice).

The Court weighs the three factors in turn.

II. Application

A. The Merits of Defendants' Motion to Dismiss

It is beyond dispute that Defendants' motion might dispose of this entire action. However, the Court is less convinced that Defendants have made the requisite "strong showing" that it will.

As an initial matter, carrying this burden is necessarily challenging at this stage of the proceedings, considering the complexity of the arguments implicated and the fact that the parties have not yet submitted their motion papers. *Batalla Vidal v. Duke*, No. 16-CV-4756 (NGG)(JO), 2017 WL 4737280, at *3 (E.D.N.Y. Oct. 19, 2017) (concluding, in light of limited argument before the Court, Defendants did not make "strong showing," even though the Court would not "fault" the moving party for "cursory briefing" on account of dispositive motion not being due for several months);[1] *see Negrete*, 2015 WL 8207466, at *1 (suggesting that "any attempt to weigh the merits of the motion to dismiss would be premature" as it was not fully briefed).

The Court must evaluate the merits of Defendants' motion based on the parties' letters submitted in advance of the pre-motion conference regarding the motion to dismiss, as well as the letters submitted pertaining to this motion for stay of discovery. Although, as a technical matter, Plaintiffs raise only four substantive claims for relief, Defendants' anticipated motion to dismiss will incorporate numerous arguments implicating complex matters of federal jurisdiction and constitutional law. The parties have been granted permission to file briefs in excess of the page limits allotted by the Individual Practices of this Court. *See* Order Granting Consent Letter Motion for Leave to File Excess Pages (ECF No. 72). However, in light of Plaintiffs' asserted need for discovery, and because the motion to dismiss briefing will not be completed until December 20, 2017, the Court attempts to evaluate the merits of Defendants' motion on the limited record available.

[1] *Batalla Vidal* is an action challenging certain aspects of the Government's decision to end the Deferred Action for Childhood Arrivals ("DACA") program. Following the cited denial of the Government's motion to stay discovery pending its motion to dismiss, the Government sought a Writ of Mandamus before the Second Circuit. *See* Full Petition for a Writ of Mandamus to the United States District Court for the Eastern District of New York, *In re: Elaine Duke*, No. 17-3345, 2017 WL 4865129 (2d Cir. Oct 23, 2017). The Second Circuit thereafter approved an emergency stay of the District Court's order until disposition of the writ. *See* Order, No. 17-3345 (ECF No. 22). The writ remains pending.

Based on the arguments that have already been presented to the Court, the Court cannot conclude that Plaintiff's complaint is devoid of merit. Due to the complexity of the challenges, the Court will not conduct a merits analysis of each claim here (nor has either party endeavored to do so in their letter submissions, quite understandably). Both parties make capable arguments in support of their positions. The Court anticipates that Defendants' motion will be well-supported and hardly lacking in credible, if not meritorious, arguments. However, the Court is persuaded that there are a number of close issues that could easily cut in Plaintiffs' favor, thus not resulting in dismissal of the entire second amended complaint. Defendants' letters implicitly support this conclusion. For example, with regard to Plaintiffs' claim pursuant to sections of FACA, Defendants argue that Plaintiffs' claim is not justiciable, yet acknowledge there appears to be a circuit split on the question. *See* Reply Ltr. at 2 (citing *Ctr. for Policy Analysis on Trade & Health ("CPATH") v. Office of U.S. Trade Representative*, 540 F.3d 940 (9th Cir. 2008); *Colo. Envtl. Coal. v. Wenker*, 353 F.3d 1221 (10th Cir. 2004); *Cargill, Inc. v. United States*, 173 F.3d 323 (5th Cir. 1999); *Pub. Citizen v. Nat'l Advisory Comm. on Microbiological Criteria for Foods*, 886 F.2d 419 (D.C. Cir. 1989)).

The Court further notes that Defendants' position on Plaintiffs' standing has shifted, and is, at this point, not entirely clear. Prior to the filing of Plaintiffs' Second Amended Complaint, Defendants took issue primarily with whether the Plaintiff organizations had sufficiently alleged a diversion of resources to establish standing because their claimed injuries were merely anticipated. *See* Pre-Motion Letter at 2. Now, even after the revision of Plaintiffs' complaint to cure that potential defect, Defendants maintain their position, despite acknowledging the low bar the Second Circuit has set for organizational standing in this context. *See* Defs' Ltr. at 3 n.1 (arguing that "defendants' anticipated arguments about standing concern activities taken by the

plaintiffs, not activities allegedly taken by the defendants" (emphasis in original)); Reply Mem. at 1 (arguing that plaintiffs have not "suffered at least a 'perceptible impairment' of their organizational activities" (quoting *N.Y. Civil Liberties Union v. N.Y. City Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012)). In addition, Defendants allege, in their reply letter and for the first time in this case, that Plaintiffs lack standing because plaintiffs' injuries are not fairly traceable to the Commission, and, in addition, that Plaintiffs cannot assert third-party standing. *Id.* at 2. Plaintiffs have not had an opportunity to rebut these arguments, and may need to do so for the first time in their opposition to the motion to dismiss. The Court merely notes Defendants' shifting positions on standing not to opine on their merits, but to illustrate that Defendants' showing cannot be described as "strong" on the limited record available to the Court.

The advantage goes to the Plaintiffs here.

B. The Breadth of the Discovery and The Burden of Responding to It

Plaintiffs have not yet served discovery in this case, but initially sought "limited discovery" pertaining to: "the formation of the Commission . . . ; what information the Commission has requested or received from other federal agencies; and how the Commission has used and intends to use the state voter files it has collected." Pls' Ltr. at 3. Plaintiffs further argue that "much of [the] information [sought] has already been collected and reviewed, if not produced, in" other litigation related to the Commission. Pls' Ltr at 3 (citing Defs.' Not. of Filing re Order on Mot. for Misc. Relief, Ex. 3, Doc. Index, *Lawyers' Comm. for Civil Rights Under Law v. Pres. Advisory Comm'n on Elec. Integ.*, No. 1:17-cv-01354 (D.D.C. Sept. 29, 2017), ECF No. 33).

After Defendants opposed, arguing that this discovery would be unduly burdensome because of the Commission's association with the Executive Branch, *see* Defs' Ltr. at 4 (citing Cheney, 542 U.S. at 385), Plaintiffs further narrowed their requests to "document discovery"

related to data collection and use and selection of commission members, to be directed solely toward Mr. Kobach and the Commission. Pls' Oppo. Ltr. at 2. Such a request, Plaintiffs argue, would "comport with *Cheney*" because it "is not directed to any senior executive officials." *Id.* Further, according to Plaintiffs, this case, unlike *Cheney*, involves a committee comprised of non-federal government officials and therefore subjects it to FACA and its disclosure requirements. *Id.* at 2-3 (citing 5 U.S.C. § App. 3(2)). Defendants counter that the Commission is staffed by the Vice President and therefore "judicial deference and restraint" is nonetheless necessary. Reply Mem. at 2-3. The Court agrees.

Contrary to Plaintiffs' contentions, *Cheney* is almost directly on point here. *Cheney*, too, concerned an advisory committee to which the President appointed "a number of agency heads and assistants—all employees of the Federal Government—to serve as members" of his National Energy Policy Development Group. 542 U.S. at 373. He further authorized the Vice President, as chairman, to "invite other officers of the Federal Government to participate as appropriate." *Id.* (internal quotation marks and citations omitted). Plaintiff organizations filed an action alleging that the committee "failed to comply with the procedural and disclosure requirements of [FACA]." *Id.* FACA imposes certain disclosure requirements *except* where a committee is "composed wholly of . . . employees of the Federal Government." *Id.* at 374 (quoting 5 U.S.C. App. § 3(2), p.2). Plaintiffs argued that, despite the attendance of non-government employed private lobbyists at committee meetings, these individuals constituted "*de facto* members of the committee" for the purposes of FACA's requirements. *Id.* They sued the committee, the Vice President, the Government officials on the committee, and the alleged *de facto* members. *Id.*

After the motion to dismiss was litigated, and only the Vice President and the Government officials remained as defendants, the district court allowed "tightly-reined discovery

to ascertain the NEPDG's structure and membership, and thus to determine whether the de facto membership doctrine applies." *Id.* at 375 (internal quotation marks and citations omitted). The government defendants ultimately sought a writ of mandamus to vacate the discovery orders, and the case ultimately proceeded to the Supreme Court. *Id.* at 376-78.

There, among other things, the Supreme Court examined the propriety of subjecting senior members of the Executive Branch to certain civil discovery obligations. *See id.* at 381-392. The Court first acknowledged that a President or Vice President's "communications and activities encompass a vastly wide range of sensitive material than would be true of any ordinary individual." *Id.* at 381 (internal citations omitted). The Court further noted that the "public interest requires that a coequal branch of Government 'afford Presidential confidentiality the greatest protection consistent with the fair administration of justice.'" *Id.* at 382 (quoting *United States v. Nixon*, 418 U.S. 683, 715 (1974)).

Under this framework, the Court held that the Executive Branch should not have to invoke executive privilege to narrow an overly broad discovery request, but rather that "respect" for the nature of the Executive's work "should inform . . . the timing and scope of discovery, . . . and that the Executive's constitutional responsibilities and status [are] factors counseling judicial deference and restraint." *Cheney*, 542 U.S. at 385, 388. In its analysis, the Court distinguished the instant case from its prior precedent that "d[id] not involve senior members of the Executive Branch." *Id.* at 385 (citing *Kerr v. U.S. Dist. Court for Northern Dist. of Cal.*, 426 U.S. 394 (1976) (concerning California Adult Authority officials and directors of corrections)).

The parallels to this case are readily apparent. However, Plaintiffs attempt to distinguish *Cheney* by arguing that they are only directing their document demands to Mr. Kobach and the

Commission, who are not the "senior executive officials" that the *Cheney* court contemplated. Pls' Oppo. Ltr. at 2. However, Defendants represent that the Commission is staffed by the Office of the Vice President, Reply Ltr. at 2, and the Court sees no reason why, under *Cheney*, the Office of the Vice President's interest in "safeguarding the confidentiality its communications" should apply with any less force to the Vice President's staff. 542 U.S. at 386. And, while Defendants make no argument with respect to Mr. Kobach, who is seemingly not a federal government employee, the subject matter of Plaintiff's discovery is no different with respect to Mr. Kobach, and it is entirely reasonable to assume that the Office of Vice President, which staffs the committee that Mr. Kobach vice-chairs, might be assembling responses on behalf of Mr. Kobach as well.

Plaintiffs further attempt to distinguish *Cheney* on the ground that this Commission is "composed of non-federal government officials," thereby subjecting it to FACA's disclosure requirements. Pls' Oppo. Ltr. at 2-3. As an initial matter, the committee in *Cheney* was, at least arguably, "composed of non-federal government officials," and this did not alter the Court's conclusion with respect to the discovery directed at senior executive officials. *See Cheney*, 542 U.S. at 367 (noting allegation that "private lobbyists regularly attended and fully participated in the Group's nonpublic meetings as *de facto* Group members"). In any event, FACA contains broad disclosure and transparency requirements with respect to meetings and documents prepared for the committee, among other things. *See* 5 U.S.C. App. § 10. Here, however, Plaintiffs are seeking documents related to the Committee's *formation*, which easily encompasses more than mere meeting minutes—perhaps, for example, internal communications among senior executive officials. This seemingly exceeds the scope of disclosure requirements

under FACA, and falls more within the ambit of *Cheney*.[2] At this stage of the proceedings, with a case-dispositive motion to dismiss pending, the Court is reluctant to rely on these statutory disclosure requirements to order discovery of that nature, especially considering the Supreme Court's admonitions in *Cheney*, which, in notable contrast to this case, involved a discovery dispute *after* a motion to dismiss was resolved.

To be sure, the scope of Plaintiffs' proposed discovery is ostensibly narrower than that at issue in *Cheney*. *See* 542 U.S. at 387 (discussing how Plaintiffs requested "everything under the sky"). However, Plaintiffs have not served any requests, and despite their limiting their requests to two "categories" in their letters, those "categories" are potentially broad. It seems only inevitable that disputes will arise, given the categorization and, as discussed above, the likelihood that document discovery could implicate communications within the Office of the Vice President, at the least. If the motion to dismiss does not dispose of this case, discovery will still require limitations and no small measure of supervision. As the Supreme Court discussed in *Cheney*, discovery in civil litigation can be "vexatious" and prone to disputes, and therefore checks must be put in place to safeguard members of the Executive Branch, who are undoubtedly "easily identifiable targets." 542 U.S. at 382, 386. While the Court does not characterize this litigation as "vexatious," these concerns are especially applicable in a case of this procedural posture.

The same goes for Plaintiffs' arguments that their discovery would be minimally burdensome because documents responsive to their proposed discovery have already been ordered produced in related litigation. While Defendants do not appear to contest Plaintiffs'

[2] Even if Plaintiffs' request were limited to the materials provided by the FACA statute, this would likely require a "document-by-document analysis . . . to determine whether a document is actually subject to disclosure pursuant to FACA," and preparation of a *Vaughn*-type index. *See* Order, *Lawyers' Comm. for Civil Rights Under Law v. Pres. Advisory Comm'n on Elec. Integ.*, No. 1:17-cv-01354 (D.D.C. July 31, 2017), ECF No. 28.

assertion, Plaintiffs have not firmly committed to narrowing their requests to those already-produced materials. Ultimately, Defendants could, pending the outcome of protracted and potentially wasteful discovery disputes, have more expansive discovery obligations in this case, all despite the apparently limited scope of discovery that Plaintiffs propose. *See, e.g.*, *Boelter v. Hearst Commc'ns, Inc.*, No. 15-CV-03934(AT), 2016 WL 361554, at *5 (S.D.N.Y. Jan. 28, 2016) (granting stay, despite possibility that Defendant would only have to "reproduce documents it ha[d] already produced in similar pending cases," where requests were broadly worded); *cf. Batalla-Vidal*, 2017 WL 4737280, at *4 (allowing limited document discovery, despite acknowledging concern of "burden[ing] the government with open-ended requests for production," where prejudice to Plaintiffs resulting from stay was strong). The potential burdens here, although perhaps speculative, are still too weighty when considered through the lens of *Cheney*.

For these reasons, the scale tips toward Defendants on this factor.

C. Risk of Unfair Prejudice to Plaintiffs

A number of considerations suggest that a brief discovery stay would not unfairly prejudice Plaintiffs, despite their arguments to the contrary.

As an initial matter, any discovery stay would be abbreviated. As discussed above, the Court set a short briefing schedule, with briefing to be completed by December 20, 2017, and a decision to follow as soon as possible after that date. *Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002) (finding that a "stay will neither unnecessarily delay the action nor prejudice the plaintiffs thereby" where the "Court intend[ed] to decide the motion expeditiously").

And, there is no fear that a discovery stay during this limited time period would cause plaintiffs to lose access to critical evidence or suffer some other imminent harm, such as possible detriment to their litigation position in the case (*e.g.*, a claim becoming moot). *Cf. Batalla Vidal*, 2017 WL 4737280, at *4 (denying discovery stay where Plaintiffs required discovery prior to imminent expiration of DACA, the policy upon which Plaintiffs' claims were based).

While Plaintiffs allege in passing that discovery about the Commission's ongoing activities could bolster their standing argument, *see* Pls' Ltr. at 3, they do not request jurisdictional discovery, *see* Defs' Ltr at 3, and, in any event, such an argument seems conjectural in light of the fact that the Commission is seemingly, at least at present, hardly conducting any activities. *See* Jessica Huseman, *Trump Voter Fraud Commission Is Sued – By One of Its Own Commissioners*, ProPublica (Nov. 9, 2017 10:05 a.m.) (discussing inaction of the Commission, despite possible anticipated meeting in December), *cited in* Pls' Oppo. Ltr at 3 nn.2 & 3.

Plaintiffs' claim further prejudice on the basis that this case concerns "the right to vote." Pls' Oppo. Ltr. at 3. While the Court appreciates that this is among the "most precious freedoms," Plaintiffs do not substantiate their claim that a brief delay of the limited discovery they propose would result "irreparable harm" to their constituents' voting rights. *Id.* (quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968)).

If anything, Plaintiffs' litigation conduct suggests a lack of urgency. Plaintiffs did not seek discovery in this matter until October 27, 2017, despite having filed this action on July 18, 2017. Indeed, although this discovery dispute had already arisen by the pre-motion conference, Plaintiffs did not make any request for discovery at the pre-motion conference, nor have Plaintiffs sought any sort of emergency or preliminary relief, further belying their claims of

immediate necessity. *See, e.g.*, *Zillow, Inc. v. Trulia, Inc.*, No. C12-1549JLR, 2013 WL 5530573, at *6 (W.D. Wash. Oct. 7, 2013) (granting stay of patent case, finding lack of prejudice to non-moving party where party had not sought preliminary injunction). In neither of their letters do Plaintiffs articulate a reason for declining to raise this discovery dispute at the pre-motion conference, nor do Plaintiffs articulate a specific harm they will endure as a result of not being able to conduct discovery over the coming few months.

For these reasons, this factor favors Defendants.

CONCLUSION

A number of components of Defendants' pending motion are certainly arguable based on the limited record before the Court. However, the Court concludes that Defendants have demonstrated good cause for a stay in discovery while their motion to dismiss is pending, because of the potential burdens that the proposed discovery would impose upon them and the lack of prejudice to Plaintiffs that would result from a brief stay of discovery.

Accordingly, Defendants' motion to stay discovery is GRANTED. Discovery in this matter is hereby stayed until a decision is rendered on Defendants' motion to dismiss.

SO ORDERED.

Dated: **November 17, 2017**
New York, New York

ANDREW L. CARTER, JR.
United States District Judge