

Pursuant to LCvR 7(m), we conferred on July 22, 2011, with plaintiffs Morgan Moss, Jr. and Thelma Tharpe who advised that they do not oppose the relief we seek. On July 25, 2011, we conferred with plaintiffs Robert Gordon and Edward Scott who also advised that they do not oppose the relief we seek.

A proposed Order is submitted herewith and oral argument is not requested.

MEMORANDUM OF POINTS AND AUTHORITIES
BACKGROUND

The Clerk has moved to dismiss the Complaint on the grounds that (1) plaintiffs do not have standing; (2) the Clerk is immune from this suit under the Speech or Debate Clause, U.S. Const. art. I, § 6, cl. 1; (3) plaintiffs' claims are moot insofar as they seek to have the Court enjoin the Clerk to "unrecognize" seated Members of the House (or have the Court somehow effect this "unrecognition" itself), and seek relief related to the 2008 Presidential election; and (4) the Complaint fails to state a claim upon which relief may be granted. *See* Memorandum of Points and Authorities in Support of Defendant's Motion Dismiss at 5-15 (Mar. 17, 2011) (ECF No. 9) ("Clerk's Memorandum"). That motion is fully briefed.³

On May 20, plaintiff Gordon moved for summary judgment. *See* Plaintiffs' Two-Part Motion for Summary Judgments for Injunctive Relief and Declaratory Relief (May

service copy to us on June 7, 2011, we never received that service copy. Moreover, although the Second SJ Motion is stamped on its face "Received" by the District Court mail room on June 13, 2011, the motion was not posted on the Court's docket until July 22, 2011.

³ *See* Plaintiffs' Motion in Opposition to Defendant's Motion to Dismiss (April 29, 2011) (ECF No. 13) (filed by plaintiff Gordon only); Defendant's Reply to Plaintiffs' Opposition to Motion to Dismiss (May 11, 2011) (ECF No. 15); Surreply to Defendant's
(continued....)

20, 2011) (ECF No. 16) (“First SJ Motion”). Shortly thereafter, the Court granted the Clerk’s unopposed motion to hold the First SJ Motion in abeyance pending the Court’s ruling on the Motion to Dismiss. *See* Minute Order (June 2, 2011) (No ECF No.).

The Second SJ Motion should be held in abeyance pending the Court’s resolution of the Motion to Dismiss for the same reasons the Court ordered the First SJ Motion held in abeyance.

ARGUMENT

The Court’s authority “to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North American Co.*, 299 U.S. 248, 254 (1936); *see also Bledsoe v. Crowley*, 849 F.2d 639, 645 (D.C. Cir. 1988); Memorandum Order in *Judicial Watch, Inc. v. U.S. Senate*, No. 1:03-cv-01066 (CKK) (D.D.C. Nov. 17, 2003) (ECF No. 30) (holding in abeyance plaintiff’s motion for summary judgment) (attached as Exhibit 1 to ECF No. 17). A court may stay all proceedings in a case or hold in abeyance parts thereof, including the briefing of motions. *See* LCvR 7(b) (opposition to a motion must be filed and served “[w]ithin 14 days of the date of service, or *at such other time as the court may direct*”) (emphasis added). Here, the Court should hold the Second SJ Motion in abeyance for the following three reasons.

First, as a matter of law, the jurisdictional issues raised in the Motion to Dismiss must be resolved before reaching the substance of the plaintiffs’ claims. *See, e.g., Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998). To do otherwise would “carr[y] the courts beyond the bounds of authorized judicial action and thus offend[] fundamental

Reply . . . to Plaintiffs’ Opposition to Defendant’s Motion to Dismiss (July 11, 2011) (ECF No. 19) (filed by plaintiff Gordon only).

principles of separation of powers.” *Id.* Indeed, “[w]ithout jurisdiction the court cannot proceed at all in any cause.” *Ex parte McCordle*, 74 U.S. (7 Wall.) 506, 514 (1868) (quoted in *Steel Co.*, 523 U.S. at 94). The standing inquiry is “especially rigorous” in cases such as this one where “reaching the merits of the dispute would force [the Court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional.” *Raines v. Byrd*, 521 U.S. 811, 819-20 (1997).

Second, it is particularly important that the Speech or Debate Clause immunity issue raised by the Clerk be resolved at the outset because that immunity serves not merely as “a defense on the merits[,] but also protects a legislator from the burden of defending himself.” *Powell v. McCormack*, 395 U.S. 486, 502-03 (1969).⁴ “The purpose of the Speech or Debate Clause is to protect Members of Congress ‘not only from the consequences of litigation’s results but also from the burden of defending themselves.’” *Hutchinson v. Proxmire*, 443 U.S. 111, 123 (1979) (quoting *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (per curiam)); see also *Browning v. Clerk, U.S. House of Representatives*, 789 F.2d 923, 926 n.6 (D.C. Cir. 1987) (“the Speech or Debate Clause was intended not only to protect legislators from liability, but also to protect them from the time-consuming burden of defending their actions in court and diverting their efforts from their congressional duties.”), *overruled on other grounds*, *Fields v. Office of Eddie Bernice Johnson*, 459 F.3d 1 (D.C. Cir. 2006); Memorandum Order in *Judicial Watch, Inc.*, No. 1:03-cv-01066, at 1-2.

Finally, proceeding with briefing on the Second SJ Motion at this time, when serious threshold jurisdictional issues already have been raised and fully briefed, is an

⁴ We explained earlier that the protections of the Speech or Debate Clause apply to the Clerk under the circumstances of this case. See Clerk’s Memorandum at 11-12.

inefficient use of the Court's and the parties' time and resources. Obviously, a ruling favorable to the Clerk on the Motion to Dismiss would obviate the need for the Court even to consider the Second SJ Motion, and render useless any prior briefing on that motion. Under these circumstances, the Court should simply defer all briefing on the Second SJ Motion until 30 days after the Court rules on the Clerk's Motion to Dismiss, if that motion is denied.

CONCLUSION

For the foregoing reasons, this unopposed motion should be granted.

Respectfully submitted,

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July 26, 2011

CERTIFICATE OF SERVICE

I certify that on July 26, 2011, I served one copy of the foregoing Defendant's Unopposed Motion to Hold in Abeyance Proceedings on Co-Plaintiffs' Motion for Summary Judgment by first class mail, postage prepaid, on:

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