IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

RENE ROMO, ET AL. PLAINTIFFS, VS. KEN DETZNER AND PAM BONDI, DEFENDANTS.	CASE NO.: 2012-CA-00412
THE LEAGUE OF WOMEN VOTERS OF FLORIDA, ET AL., PLAINTIFFS, VS. KEN DETZNER, ET AL., DEFENDANTS.	CASE NO.: 2012-CA-00490

COALITION PLAINTIFFS' SUPPLEMENTAL RESPONSE TO LEGISLATIVE DEFENDANTS' MOTION TO ALTER OR AMEND THE JUDGMENT

Coalition Plaintiffs hereby supplement their Response to Legislative Defendants' Motion to Alter or Amend the Judgment to provide additional authority that provides guidance in response to statements made by this Court at the July 24, 2014 hearing (the "Remedy Hearing").

I. THIS COURT SHOULD ADOPT A REMEDIAL PLAN IN TIME FOR THE 2014 CONGRESSIONAL ELECTION

At the Remedy Hearing, this Court asked what would happen if it were to take no further remedial action before the 2014 election. Federal law provides the following answer:

> Until a State is redistricted in the manner provided by the law thereof after any apportionment, the Representatives to which such State is entitled under such apportionment shall be elected in the following manner: . . . if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large and the other Representatives from the districts then prescribed by the law of such State . . . .

2 U.S.C. § 2a(c)(2). This statute provides a "stop-gap measure" in the "event that no constitutional redistricting plan exists on the eve of a congressional election, and there is not enough time for either the Legislature or the courts to develop an acceptable plan." *Carstens v. Lamm*, 543 F. Supp. 68, 77 & n.23 (D. Colo. 1982). Without a remedial plan in place, section 2a(c)(2) would be triggered here because Legislative Defendants would not have "redistricted in the manner provided by the law [of Florida] after any apportionment," *see* § 2a(c)(2), and Florida has gained two congressional seats after the 2010 census. Thus, absent further action from this Court, Section 2a(c)(2) contemplates that the 2014 election would proceed under the admittedly gerrymandered 2002 Congressional Plan, with the two new seats elected at large.

The "stop-gap" provided by federal law is unacceptable, as it would undermine both the letter and spirit of the FairDistricts Amendments. Fortunately, when a legislature fails to reapportion as provided by law, the United States Supreme Court has interpreted 2 U.S.C. § 2c to envision reapportionment "by state and federal courts", *see Branch v. Smith*, 538 U.S. 254, 272 (2003); and, to avoid problematic consequences the Supreme Court has interpreted 2 U.S.C. § 2a(c) to apply only "as a last resort remedy… when, on the eve of a congressional election, no constitutional redistricting plan exists and there is no time for either the State's legislature or the courts to develop one," *see id.* at 273-75 (plurality opinion interpreting § 2a(c) as a last resort to avoid constitutional concerns of complying with the "one-person, one-vote" principle).

The best way to avoid the complications and uncertainty created by 2 U.S.C. § 2a(c)(2), while also ensuring timely constitutional elections and addressing Legislative Defendants' objection that a special election would "remove members of Congress from their seats,"[1] is to

[1] Legislative Defendants suggested at the Remedy Hearing that the right to remove members of Congress before expiration of their constitutionally established term resides exclusively with Congress and thus a special election is

implement a remedy for 2014. Coalition Plaintiffs have shown that it is feasible to conduct a valid election in 2014 by adjusting pre-election deadlines and either delaying the general election until a date in December or obtaining a MOVE Act waiver (*see, e.g.*, Proposals 2-4 in Exhibit 1 to CP's Opposition Brief). Given Legislative Defendants' campaign to oppose, violate, and undermine the FairDistricts Amendments, it is unsurprising that they would reject any such proposal out of hand and offer unfounded objections to avoid constitutional elections.[2]

Equally, if not more, disconcerting is that election officials have made no apparent efforts to devise a solution that would allow for a 2014 election under a valid plan – for example, by investigating the feasibility of hiring additional employees or other methods to mitigate the burdens of an adjusted schedule, requesting a MOVE Act waiver in case it proves necessary, or proposing ways to speed delivery of absentee ballots and to disseminate election information to military personnel.

There is still time to have a constitutional plan in place before the end of 2014, and that approach – even if it requires additional cost and effort – avoids the practical and legal difficulties inherent in 2 U.S.C. § 2a(c)(2) without keeping unconstitutional districts in place for another election cycle. Coalition Plaintiffs stand ready to assist this Court in developing a remedial solution that is as cost-effective and efficient as possible while ensuring that a constitutional election occurs in 2014.

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not a viable option. If this Court were to conclude Legislative Defendants are correct, then a 2014 remedy becomes all the more imperative.

[2] Legislative Defendants, for example, argued at the Remedy Hearing that a 90-day period for seeking MOVE Act waivers is an insurmountable obstacle. Yet the exact same portion of the statute provides that the 90-day period does not apply when "[t]he State has suffered a delay in generating ballots due to a legal contest," in which case the waiver must simply be requested by the Secretary of State "as soon as practicable." 42 U.S.C. § 1973ff-1(g)(2)(B)(ii), (3)(B). The president's designee is then required to respond to the waiver request "not later than 5 business days after the date on which the request is received." 42 U.S.C. § 1973ff-1(g)(3)(B).

II. THIS COURT CAN APPOINT AN INDEPENDENT EXPERT TO ASSIST IN CRAFTING A REMEDIAL PLAN

At the Remedy Hearing, this Court expressed skepticism that it would be able to quickly carry out the technical process of drawing a remedial plan itself in the expedited time frame necessary to affect the 2014 election. Courts routinely address this understandable concern by appointing an independent expert to assist in preparing the remedial plan. *See, e.g.*, *Rodriguez v. Pataki*, 207 F. Supp. 2d 123, 124-25 (S.D.N.Y 2002); *Larios v. Cox*, 306 F. Supp. 2d 1212, 1213 (N.D. Ga. 2004); *DeGrandy v. Wetherell*, 794 F. Supp. 1076, 1081 (N.D. Fla. 1992); *In re Petition of Reapportionment Comm'n*, No. SC 18907, Order Directing Special Master (Conn. Jan. 3, 2012) (attached as Exhibit C to Romo Pl. Resp. to Leg. Def. Mot. to Alter or Amend). Florida law contemplates the designation of such an expert by allowing courts to "appoint some person, not a party to the action, to perform" an act required by a judgment "insofar as practicable." FLA. R. CIV. P. 1.570(c)(3). There are national redistricting experts who have prepared remedial maps under similarly time-sensitive circumstances and who can provide the expertise necessary to quickly prepare a plan, obtain input from the parties, and make appropriate recommendations to this Court. Accordingly, if this Court has any concern about its ability to fashion a remedial plan within the necessary time frame, it should appoint an independent expert to assist in fashioning a remedial plan for the 2014 election.

III. THIS COURT SHOULD DIRECT THE PARTIES TO SUBMIT THEIR PROPOSED REMEDIAL PLANS IMMEDIATELY AND CONVENE A HEARING DURING WHICH THOSE REMEDIAL PLANS ARE CONSIDERED AND ONE IS ADOPTED

To be sure, time is running short. Given the exigency of the circumstances and the importance of ensuring that a constitutionally valid election takes place in 2014, Coalition Plaintiffs respectfully request this Court to direct the parties to submit their proposed remedial

maps no later than Wednesday, August 6, 2014.[3] Coalition Plaintiffs further respectfully request that this Court set an evidentiary hearing as soon thereafter as is practicable during which the Court can consider the alternative remedial maps – with feedback from the parties and perhaps with the assistance of a redistricting expert – and during which this Court will adopt an appropriate, constitutionally compliant map in time for the 2014 elections, the dates for which can be postponed to ensure sufficient time remains to implement the selected remedy.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 2014 I filed the foregoing using the State of Florida ePortal Filing System. I further certify that a copy of the foregoing has been served via email on all counsel of record listed on the Service List below.

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[3] As this Court is aware, Coalition Plaintiffs and Romo Plaintiffs have each already submitted their respective proposed remedial maps. Coalition Plaintiffs have also provided all parties with the .kmz file for their proposed remedial map so that the parties may evaluate it using the MyDistrictBuilder application.

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