

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

WILLIAM WHITFORD, ROGER ANCLAM,)	
EMILY BUNTING, MARY LYNNE DONOHUE,)	
HELEN HARRIS, WAYNE JENSEN,)	
WENDY SUE JOHNSON, JANET MITCHELL,)	15-cv-421-bbc
ALLISON SEATON, JAMES SEATON,)	
JEROME WALLACE, and DONALD WINTER,)	
)	
Plaintiffs,)	
)	
v.)	
)	
BEVERLY R. GILL, JULIE M. GLANCEY,)	
ANN S. JACOBS, STEVE KING,)	
DON MILLIS, and MARK L. THOMSEN,)	
)	
Defendants.)	

**PLAINTIFFS’ RULE 59(e) MOTION TO AMEND JUDGMENT TO RETAIN
JURISDICTION REGARDING REMEDY**

Pursuant to Rule 59(e), Plaintiffs William Whitford, et al., through their undersigned counsel, respectfully move the Court to amend its judgment to include a provision expressly retaining jurisdiction over this matter to adjudicate the adequacy of any replacement plan enacted by the Wisconsin Legislature and, in the event of a legislative impasse or the enactment of a deficient remedy plan, impose a full and adequate remedy plan of its own.

On November 21, 2016, this Court held that Act 43’s Wisconsin Assembly redistricting plan constituted an unconstitutional partisan gerrymander. Trial Op. Dkt. #166. On January 27, 2017, after briefing from the parties, this Court enjoined the Defendants from any further use of Act 43’s redistricting plan. Remedy Order Dkt. #182. In recognition of the Supreme Court’s directive in redistricting cases “to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure” before imposing a court-ordered

redistricting plan, this Court ordered the Legislature to enact a new redistricting map. *Id.* But in order to spare the people of Wisconsin yet another election under an unconstitutional scheme, the Court further ordered that the “Legislature enact, and the Governor approve, a new redistricting map by November 1, 2017” that complies with its November 26, 2016 order. *Id.*

Therefore, the final remedy for the unconstitutional redistricting map is not yet in place. In order to ensure that the constitutional violation at issue is fully remedied, this Court should retain jurisdiction over this matter until a new map is enacted and approved by this Court. *See, e.g., White v. Weiser*, 412 U.S. 783, 797 (1973) (“The District Court should not . . . refrain from providing remedies fully adequate to redress constitutional violations which have been adjudicated and must be rectified.”).

Just as it is customary for a District Court to give the Legislature the first opportunity to enact a remedial map after a map is struck down, it is also customary for the District Court to retain jurisdiction and require the State to submit its remedial plan for review. *See Covington v. North Carolina*, No. 1:15-cv-399 (M.D.N.C. Aug. 15, 2016) (Judgment and Order) (enjoining a redistricting plan, ordering North Carolina to redraw the plan, and “retain[ing] jurisdiction to enter such orders as may be necessary to enforce this Judgment and to timely remedy the constitutional violation”); *Vieth v. Pennsylvania*, 195 F.Supp.2d 672 (M.D. Pa. 2002) (enjoining a redistricting plan, ordering Pennsylvania to submit a new plan “in conformity with [its] opinion”, and retaining jurisdiction to review the plan); *Johnson v. Mortham*, 926 F.Supp. 1460 (N.D. Fla. 1996) (ordering the Florida Legislature to adopt a new plan and submit the plan to the Court for review and retaining jurisdiction “to enter such orders as it may deem appropriate, including an order for a valid redistricting plan”); *Gorin v. Karpan*, 775 F.Supp. 1430 (D. Wyo. 1991) (“Recognizing that reapportionment is primarily a political and legislative process, we

have chosen to retain jurisdiction and defer a hearing on the issuance of final injunctive relief, in order to give the Wyoming State Legislature an opportunity to act effectively by reapportioning in accordance with the guidelines set forth in this opinion.”); *Skolnick v. State Electoral Bd. of Ill.*, 376 F.Supp. 839 (N.D. Ill. 1971) (“The United States Supreme Court said that redistricting by the appropriate state agencies was to be encouraged, and ordered this court to stay its hearing so as to afford Illinois state agencies an opportunity to act. But even under these circumstances, the United States Supreme Court ordered that jurisdiction was to be retained by this court to fashion a ‘valid reapportionment plan, failing timely state action.’”).

Any appeal of this Court’s judgment to the Supreme Court would not affect this Court’s jurisdiction over the remedy phase of this litigation. It is well-established that a district court retains jurisdiction to enforce its judgment pending appeal. *See Personhuballah v. Alcorn*, 155 F. Supp. 3d 552 (E.D. Va. 2016) (“Because the remedial phase of this case is not an ‘aspect[] of the case involved in the appeal,’ we retain jurisdiction over it.” (quoting *Griggs. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982))); *see also Roberts v. Colorado State Bd. of Agric.*, 998 F.2d 824, 827(10th Cir. 1993); *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 588-89 (6thCir. 1987).

This Court has already held that the people of Wisconsin should not be forced to endure yet another election under this apportionment scheme. As such, the Court has ordered that the Legislature must enact a new redistricting plan “no later than November 1, 2017” and further ordered that the plan “must comply” with the November 21, 2016 order striking down Act 43 as an unconstitutional partisan gerrymander. In order to enforce the Court’s order, Plaintiffs respectfully request that the Court amend the judgment issued on January 27, 2017 to include a provision expressly retaining jurisdiction over this matter and requiring Defendants to submit

any new plan to the Court to ensure that it complies with this Court's prior orders. A proposed order is attached to this motion.

Dated this 6th day of February, 2017.

Respectfully submitted,

/s/ Douglas M. Poland

Douglas M. Poland
State Bar No. 1055189
RATHJE WOODWARD, LLC
10 East Doty Street, Suite 507
Madison, WI 53703
Phone: (608) 960-7430
Fax: (608) 960-7460
dpoland@rathjewoodward.com

Danielle Lang (*pro hac vice*)
CAMPAIGN LEGAL CENTER
1411 K Street NW, Suite 1400
Washington, DC 20005
(202) 736-2200
dlang@campaignlegalcenter.org

Attorneys for Plaintiffs, William Whitford, et al.