

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

WILLIAM WHITFORD, et al.,

Plaintiffs,

v.

Case No. 15CV421-bbc

MARK L. THOMSEN, et al.,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFFS' RULE 59(E) MOTION
TO AMEND JUDGMENT TO RETAIN JURISDICTION
REGARDING REMEDY**

The Court should deny the plaintiffs' motion to alter or amend the judgment because it is unnecessary. The plaintiffs claim that the Court's judgment should expressly "retain jurisdiction over this matter until a new map is enacted and approved by this Court." (Dkt. 185:2.) The judgment does not need to be amended because a district court, "with or without an explicit reservation of jurisdiction, retains jurisdiction to enforce the injunction." *McCall-Bey v. Franzen*, 777 F.2d 1178, 1183 (7th Cir. 1985).

The Court does not need to amend the judgment to say that "the Court retains jurisdiction to enter such orders as may be necessary to enforce the Court's Judgment in this matter and to timely remedy the constitutional violation," (Dkt. 185-1), because it has that power irrespective of whether the

judgment specifically says so. *United States v. Fisher*, 864 F.2d 434, 436 (7th Cir. 1988). The consent decree under review in *Fisher* “contained a provision continuing the district court’s jurisdiction in order to assure compliance with the consent decree.” *Id.* The Seventh Circuit noted this “provision was superfluous: when a court issues an injunction, it automatically retains jurisdiction to enforce it.” *Id.* As was explained in *McCall-Bey*, “[a]n injunction is supposed to be a swift and effective remedy, summarily enforceable through . . . other supplementary proceedings in the court that issued the injunction.” 777 F.2d at 1183. Should the Legislature fail to enact a plan by November 1, 2017, the Court would have jurisdiction to conduct “other supplementary proceedings” to enforce its injunction. *Id.*

The rule is no different for injunctions enjoining redistricting plans. For example, the plaintiffs cite the first injunction issued in *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), which expressly retained jurisdiction. (Dkt. 185:2.) That injunction directed “the parties to file supplemental briefs on an appropriate deadline for such action by the legislature” and whether other relief was appropriate. *Covington*, 316 F.R.D. at 177. The *Covington* court then issued a subsequent injunction directing the Legislature to draw revised maps by March 15, 2017. *Covington v. North Carolina*, No. 1:15-CV-399, 2016 WL 7667298 (M.D.N.C. Nov. 29, 2016). The second injunction in *Covington* is equivalent to this Court’s injunction of

January 27, 2017, (Dkt. 182), and it did not expressly retain jurisdiction over the case. Not expressly retaining jurisdiction does not leave the *Covington* court or this Court powerless to enforce their injunctions because district courts “automatically retain[] jurisdiction to enforce” injunctions. *McCall-Bey*, 777 F.2d at 183.

For the foregoing reasons, the Court should deny the plaintiffs’ motion and allow the appeal in this case to proceed. *See* Fed. R. App. P. 4(a)(4)(B)(i) (notice of appeal does not become effective until Rule 59 motion decided).

Dated this 14th day of February, 2017.

Respectfully submitted,

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