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P R O C E E D I N G S

(Call to Order of the Court at 10:04 AM on Monday,
April 4, 2022.)

JUDGE JORDAN: Good morning. Thank you for being
here. Have a seat.

Judge Rodgers, Judge Winsor and I are very happy to
have you here. We thought it was a good idea to get together
face-to-face and try to figure out where we are going and how we
are going to move and that is what this hearing is for.

So all of us will have questions for all of you and
hopefully you will be able to provide us with some answers.

So with that being said, let me begin with the first
question and this is for both sides: Where do things stand in
the *Arteaga* case that is pending in state court?

We will start with the plaintiffs first.

MR. DISKANT: Your Honor, I'm Greg Diskant. Do you
prefer me to speak from the podium?

JUDGE JORDAN: You know, I don't know the acoustics
here but I can hear you well so it doesn't matter where you
speak from.

MR. DISKANT: Okay.

Actually, co-counsel from the proposed intervenor,
Christina Ford, was in that case, and I think she would give you
a more complete answer than I could, if you would permit her to
speak.

1 JUDGE JORDAN: Sure.

2 MS. FORD: Good morning, Your Honors. My name is
3 Christina Ford. I am here on behalf of the proposed
4 intervenors.

5 I realize the panel said you wouldn't decide
6 intervention today, but no one has opposed our intervention so
7 we are here today.

8 So, the state case: We filed the complaint on
9 March 11. The Secretary answered on Friday evening.

10 We do have another defendant in that case, the
11 Attorney General. The Attorney General has still not appeared
12 in that case. Has not answered.

13 We have a status conference next week, but we do not
14 have a schedule in that case, or any concrete path forward right
15 now in the state case.

16 So that is where it stands today.

17 JUDGE JORDAN: Since you're here, and we are glad that
18 you are, we have another question for you then. That is: Is
19 your intervention here a pure piggy-back-type intervention? In
20 other words, you are not going to try to broaden the scope of
21 the complaint or bring in any other defendants? I don't want to
22 put words in your mouth, but I want to make sure I understand
23 exactly what the intervention is going to look like if it's
24 granted.

25 MS. FORD: Sure. We do not intend to expand the scope

1 of this case.

2 If you look at our complaint, and the Common Cause
3 plaintiffs' complaint, we very similarly are trying to resolve
4 malapportionment, so don't intend to expand the scope of this
5 case at all.

6 JUDGE RODGERS: But the defendants are different.

7 MS. FORD: They are different. I don't think at this
8 point we would add Attorney General Moody to this case.

9 JUDGE WINSOR: But would you plan to remove the
10 parties that were in the initial complaint that are no longer
11 parties in this case? Your proposed intervenor complaint has
12 the legislative defendants and the governor as well.

13 MS. FORD: It does not.

14 JUDGE WINSOR: It does not?

15 MS. FORD: We only have the Secretary of State and the
16 Attorney General.

17 JUDGE WINSOR: Okay. I misunderstood then.

18 JUDGE JORDAN: So you have a status conference next
19 week?

20 MS. FORD: Yes.

21 JUDGE RODGERS: When?

22 MS. FORD: April 12th.

23 JUDGE JORDAN: Has the state court asked you and the
24 Secretary to provide proposed scheduling orders, or anything
25 like that, or is this going to be the first get-together where

1 you can talk about the issues?

2 MS. FORD: Right. This will be the first thing. The
3 state court has not entered any substantive orders.

4 JUDGE JORDAN: Okay. All right.

5 Thank you very much okay.

6 Let's hear from the Secretary's counsel.

7 MR. JAZIL: Your Honor, my friend's description of
8 what's going on in the state case is accurate. We have a
9 hearing on the 12th and hopefully we will take up scheduling
10 then with Judge Dempsey before the Second Circuit.

11 JUDGE JORDAN: When is the Attorney General's current
12 due date for responding in some way, shape, or form to the state
13 complaint?

14 MR. JAZIL: Your Honor, if the Attorney General was
15 served on or about the same time as the Secretary then it would
16 be April 25th.

17 JUDGE JORDAN: April?

18 MR. JAZIL: 25th, Your Honor.

19 JUDGE JORDAN: 25th. Okay.

20 So after -- at least in terms of time, after the
21 status conference at the state court?

22 MR. JAZIL: Yes, sir.

23 JUDGE JORDAN: Okay.

24 And to confirm what is in the status report that we
25 received from both sides, you either don't object or take no

1 position on the proposed intervention?

2 MR. JAZIL: That is correct, Your Honor. We take no
3 position.

4 JUDGE JORDAN: So that means no objection in legal
5 terms?

6 MR. JAZIL: Yes, sir.

7 JUDGE JORDAN: Thank you.

8 All right.

9 So, as you know, we sit as a three judge court and we
10 have not really discussed any substantive issues. So what you
11 are going to hear from the three of us today are just our own
12 thoughts about how we go forward, and what we have to worry
13 about, and what we have to concern ourselves with.

14 So I will speak on my behalf only about scheduling
15 concerns. And the concern for me, having done this once before,
16 is that we don't know whether we are going to be in the same
17 place three weeks from now that we are today.

18 As things stand now, it looks like the parties agree
19 that the state districts are currently malapportioned because of
20 the increase in population in Florida and because Florida got a
21 new congressional district which doesn't yet exist.

22 So if this case were to proceed in the posture that it
23 is now, say the legislature doesn't come up with a new map in
24 its special session later in April, then this will look like a
25 remedies trial, right? To figure out what the map should look

1 like; whether it's us or whether it's the state court that does
2 it, somebody is going to have to figure out a map. And the
3 litigation would head off in one direction.

4 On the other hand, if the legislature does pass a map
5 that the governor accepts three weeks from now then it's going
6 to be a different sort of case because then there may be a
7 challenge to the map. And then that would entail both a
8 liability phase. And, if there are any problems or
9 deficiencies, then a remedies phase.

10 So there is a lot of uncertainty about exactly how
11 this case is going to proceed.

12 Have you thought about whether or not discovery should
13 just be common for both cases? In other words, whatever
14 discovery you take in one case will automatically govern with
15 respect to the other case?

16 It looks like the parties are going to be largely the
17 same and we are proceeding on relatively parallel tracks.

18 So I am wondering if you have thought about how that
19 discovery would work on a procedural level if we went forward,
20 or if the state court went forward for that matter.

21 MR. DISKANT: If I may, Your Honor.

22 First, part one, as you have described it, the
23 existing complaint on the existing maps I think we both agree we
24 are at a remedies phase, unless there is a map passed by the
25 state or state court.

1 So, all we have in the pleaded case is a remedies
2 case. And if we move promptly we will take no discovery. I
3 don't think the state will because we think we are at an exigent
4 state of affairs with respect to the current situation.

5 If we have a new map --

6 JUDGE JORDAN: You wouldn't take -- I'm sorry to
7 interrupt, but you would not even take the deposition of their
8 expert on the map that he or she proposed and drew and why he or
9 she drew it in a certain way?

10 MR. DISKANT: We would be prepared not to -- let me
11 back up.

12 The real exigency, in our view, is we're going to put
13 on Wednesday some papers -- declarations -- on timing. If you
14 work backwards through the dates for when the supervisors of
15 elections need maps they are going to tell you they need maps by
16 the end of April, or early May, in order to meet the primary in
17 August.

18 If that's correct, and we have no reason to believe
19 it's incorrect, then we need a map from the state legislature,
20 from the state court, or if they both fail, from this Court by
21 early May.

22 And so therefore, we are proposing moving very, very
23 quickly. We do contemplate -- I think we both talked about a
24 hearing. So the hearing would be in lieu of a deposition.

25 We can talk to each other. I think our goal, at

1 least, is to expeditiously get this case briefed and ready for a
2 decision by this Court in the event the state agencies fail to
3 do their job.

4 JUDGE WINSOR: But a decision by when? I mean, assume
5 the legislature doesn't do anything. And I guess by everyone's
6 agreement, some court then, in that instance, would draw a map.
7 If it's this Court, you want it all to be done before when? You
8 are saying --

9 MR. DISKANT: We would like a decision by early May.

10 JUDGE WINSOR: Okay.

11 And you're saying that's because that's when the
12 supervisors would need the information working backwards?

13 MR. DISKANT: Yeah. I can attempt to give you the
14 dates but they will do them more accurately. But they do this,
15 and that, and they get things to the printer, and they need this
16 much time for printing. And they say six to eight weeks before
17 June 24th. June 24 is the date by which they have to certify --
18 the candidates have to be certified.

19 July 9 is the day on which ballots have to be mailed
20 to military and overseas.

21 And working backwards they tell us they need six to
22 eight weeks.

23 So, six to eight --

24 JUDGE WINSOR: Suppose it comes, you know, the end of
25 June, a map, instead of the -- or instead of the beginning of

1 May, the end of May, the consequence is what? It cannot
2 possibly be put in place for the elections?

3 MR. DISKANT: That's what we're told. I don't know
4 whether by working 36 hours a day, instead of 24, they can get
5 it done. If the Court is interested in the subject, they could,
6 of course, hold a hearing with the supervisors of elections to
7 understand the problems they face.

8 There is geo-coding, aligning the precincts to
9 districts, and they are done for, you know, all the citizens of
10 the state, so it's a very large, time-consuming job. And,
11 unfortunately, we are at the last minute, at least as we
12 understand the facts.

13 So we are prepared, because of the greater interest in
14 having maps than anything else, to go forward with briefing
15 soon -- now. We think we should get going on briefing so that
16 in the event that the legislature doesn't pass a map that the
17 governor will sign, and the state court has enacted, then,
18 pursuant to *Germano* and *Grove*, this Court can protect the
19 interests of the citizens of the state by putting a map in
20 place. So that's part one.

21 As to part two, there is no part two. Your Honor
22 asked about would there be a challenge to the new maps. We
23 don't know whether there will be a challenge to the new maps.
24 We don't know that our clients will bring a challenge to the new
25 maps. We don't know if this case will turn into a challenge.

1 So I think of that as a separate issue and not part
2 one of this case, but I can't tell you it is part one of this
3 case.

4 JUDGE JORDAN: I guess my only comment is that your
5 clients, and the proposed intervenors, may not be the only ones
6 who desire to do something with regards to a new map. And so I
7 don't want to guess on what your clients may or may not do, but
8 there may be other individuals, or groups, out there who take a
9 different position and so we may be in a whole different
10 ballgame.

11 MR. DISKANT: That's absolutely correct.

12 All I am saying is the case that's been pleaded, and
13 that's caused the convening of this three judge court, is not
14 that hypothetical.

15 JUDGE JORDAN: So you are prepared to go into a
16 remedies phase, assuming the legislature does not draw a map,
17 without any discovery? You are going in like if it's a
18 preliminary injunction hearing you're going in blind?

19 MR. DISKANT: We are both going in the same way. The
20 state -- and we can discuss, and the state may disagree with me,
21 but basically we are identically situated in the remedies phase.
22 We are each going to propose a map. There is no map to attack.
23 There is nothing.

24 JUDGE JORDAN: I know. But you have to convince
25 whoever is going to decide on the map about the benefits of your

1 map and the deficiencies of the other map.

2 MR. DISKANT: That's correct.

3 JUDGE JORDAN: And usually that's going to entail some
4 sort of an evidentiary hearing where you get to ask questions
5 and the other side gets to ask questions of the proposed
6 mapmaker.

7 MR. DISKANT: Yes.

8 JUDGE JORDAN: What did you take into account? Why
9 did you do this? Why did you draw this district this way? If
10 you drew it that way, wouldn't you have the same outcome?
11 Wouldn't you have the dilution issues? Wouldn't you have
12 retrogression issues, and the like.

13 So I just want to make sure I'm hearing you right that
14 you are prepared to go into a remedies trial, in this case, if
15 the legislature does not draw a map in the special session,
16 without discovery?

17 MR. DISKANT: Let me be clear, because I think
18 Your Honor has flagged what's -- what would potentially be a
19 legitimate concern for us.

20 I think I would like a deposition of their expert. I
21 think they would probably like a deposition of our expert. But
22 we have not had a chance to confer on that.

23 What I was talking about is the kind of discovery that
24 you sometimes have in these cases where you are looking through
25 emails or you are looking for communications.

1 JUDGE JORDAN: I understand that.

2 MR. DISKANT: All of that is what I'm setting to the
3 side.

4 We each come in with an expert who has a map, you
5 know. I would probably like to take his deposition. Counsel
6 for the Secretary would probably like to take the deposition of
7 our expert. But that can be done two days before the hearing.
8 I don't --

9 I guess my main point is discovery should not be a
10 time-consuming process. If there is any it should be quick and
11 directed to the issues at the hearing.

12 JUDGE JORDAN: Okay.

13 From your perspective, you see that as they gave you
14 an expert report with a proposed map and you take the deposition
15 of the person who helped them draw the map?

16 MR. DISKANT: Yes. And --

17 JUDGE JORDAN: And vice versa?

18 MR. DISKANT: Again, subject to discussion with
19 counsel.

20 JUDGE JORDAN: Yeah, I know. But that's your
21 perspective?

22 MR. DISKANT: As I stand here at this moment, yes.
23 That seems to be about what we need.

24 Basically, there have been a variety of maps out
25 there. There have been maps proposed by the Senate, and the

1 House, and the House and the Senate together, and the governor.
2 And those create a universe of maps which, from our
3 perspective -- others may disagree -- a universe of the maps
4 that at least some governmental body is supporting, and we think
5 that's probably a decent place to start.

6 I think what we would probably do -- I mean, I won't
7 commit to it, but I think we would probably --

8 JUDGE JORDAN: It's not a commission. We're moving.

9 MR. DISKANT: Okay.

10 JUDGE JORDAN: We're moving. So this is your shot.
11 We are not going to be able to convene another hearing in a
12 couple of days.

13 MR. DISKANT: Here is what we will do: We will show up
14 and we will advocate for the adoption of the Senate map known as
15 8060.

16 JUDGE JORDAN: I didn't mean to say that I wanted your
17 substantive position.

18 MR. DISKANT: Okay. I'm sorry.

19 JUDGE JORDAN: That's okay.

20 MR. DISKANT: Now you have it.

21 JUDGE JORDAN: But what I meant is that I am going to
22 get you and Mr. Jazil on the other side to commit to the
23 discovery that you think is necessary if we are moving solely in
24 a remedies phase. Before we finish today I want to know what
25 that position is.

1 MR. DISKANT: That's our position. I'm happy to
2 consult with counsel.

3 JUDGE WINSOR: But as I read your papers you want an
4 April 11th deadline to propose maps; correct?

5 MR. DISKANT: If we got the go ahead -- if we got the
6 green light today, yes.

7 JUDGE WINSOR: That's what you are requesting. But
8 you are saying that the map that you would propose is not some
9 new map. It's a map that was already proposed in the
10 legislature?

11 MR. DISKANT: Yes.

12 JUDGE WINSOR: And that was 8060.

13 MR. DISKANT: So the tires have been kicked on it.
14 There is a lot of information with respect to it. We would not
15 be coming in out of the blue.

16 JUDGE WINSOR: So what you would be filing, if you had
17 it your way on April 11th, would be that map along with some
18 affidavits from some experts explaining why that's an
19 appropriate map?

20 MR. DISKANT: Yeah. That's exactly right.

21 JUDGE RODGERS: What happened with 8060?

22 MR. DISKANT: It disappeared.

23 What happened, substantively, was 8060 was proposed by
24 the Senate. Thereafter the governor proposed his own maps and
25 attacked the legislature's position.

1 JUDGE RODGERS: Right. I read that.

2 MR. DISKANT: And the result was what happened next.

3 JUDGE RODGERS: So it just died on the vine.

4 MR. DISKANT: It died on the vine.

5 JUDGE JORDAN: All right. Thank you.

6 Okay. Mr. Jazil?

7 MR. JAZIL: Thank you, Your Honor.

8 So starting off, where my friend left off, as I hear
9 my friend, I see this case is becoming moot assuming the
10 legislature passes a map and the Governor signs a map because
11 the case, as pled, is a malapportionment case and there would no
12 longer be malapportionment. So this case, and the state case,
13 would become moot if and when the political branches enact a
14 map.

15 JUDGE JORDAN: The problem is, as we stand here -- you
16 and me and Mr. Diskant -- we are all sort of guessing about what
17 may happen in the future, right? So that may come to pass, but
18 it may not come to pass.

19 MR. JAZIL: Yes, Your Honor. And that's perfectly
20 appropriate with *Grove*, the U.S. Supreme Court decision from
21 1993 allows this Court to provide deadlines by which certain
22 things need to happen, or else the judicial machinery will kick
23 in and set a schedule for us to abide by.

24 Your Honor, then I hear my friend discussing the
25 potential maps, assuming we are at an impasse and the remedy is

1 necessary, my friend suggests that he is going to put forward a
2 map that the legislature considered but did not pass. And if
3 that's the case, we would be fine, as my friend suggested, to
4 depose their expert, and have our map, whatever it is, be
5 presented by an expert, who then is deposed by them.

6 My only concern, Your Honor, however, is that my
7 client will not be in a position to present a map until the
8 legislative process runs its course because she serves at the
9 pleasure of other political actors.

10 JUDGE JORDAN: Understood. But there is a way to
11 massage that and keep the pressure on, as they say.

12 MR. JAZIL: Yes, Your Honor.

13 JUDGE JORDAN: The plaintiffs want to move quickly.
14 And we can let you move quickly. It's not going to be any
15 burden on the secretary. She is not going to have to respond in
16 any way immediately. And, again, I speak only for myself, not
17 for my two colleagues. We will have talk about this. But one
18 way to do this is to give you the quick turn-around time that
19 you want on the plaintiffs' side to submit your proposed map,
20 the expert report, the affidavits, whatever else you need on an
21 evidentiary basis going forward, and to let the secretary
22 respond with a little bit of breathing room after the
23 legislative session is done.

24 But you will know what your target is if there is an
25 impasse. And you will know what you are shooting at and you

1 will start preparing. And should there not be a map drawn by
2 the legislature then you know that we are moving forward full
3 steam ahead.

4 MR. JAZIL: Understood, Your Honor.

5 JUDGE RODGERS: Mr. Jazil, do you agree with
6 Mr. Diskant's assessment of the timing that's needed by the
7 supervisor of elections?

8 MR. JAZIL: No, Your Honor. We do not. As we layout
9 in our papers in our motion for stay, June 13 to 17 is the
10 window within which qualification must happen. And after a
11 decennial year, qualification through the petition process --
12 which is the deadline my friends rely on, the May 16th deadline
13 if someone wants to petition to be on the ballot -- is
14 different.

15 In the election year following a decennial census,
16 suppose I were a candidate for congressional office, I do not
17 know where my districts are. I can collect signatures equal to
18 one percent of whatever the district population is from anywhere
19 in the state. And I can provide those signatures to the
20 supervisors of elections for verification. The deadline for the
21 supervisors to verify the signatures from anywhere in the state
22 is June 6.

23 So we believe, just the way the law reads and how the
24 Northern District of Florida, in *Degrandy versus Wetherell*
25 treated the issue, is that the appropriate deadline is the

1 qualification deadline June 13 to 17. That deadline applies to
2 anyone, whether petitioned through writing a check or through
3 signatures.

4 JUDGE RODGERS: When do you all plan to respond to the
5 complaint?

6 MR. JAZIL: Your Honor, I believe our deadline is
7 early next week, or this Friday -- pardon me -- so we will have
8 our answer to the plaintiff on Friday.

9 MR. DISKANT: If I could just comment on what counsel
10 just said.

11 The April date that he is talking about had nothing to
12 do with the presentation I made.

13 Our argument is based -- the evidence we will submit
14 will be based on the time it takes for the supervisor of
15 elections to prepare the maps for printing. And that's going to
16 go back to late April, early May.

17 And, Your Honor, if I may, we're happy to move
18 quickly, but I think we should be moving quickly evenhandedly so
19 the matter is fully briefed.

20 I don't see an enormous benefit to us, or even to the
21 Court, for us to brief something and then have it sit there for
22 three weeks until they respond.

23 And, finally, I think that the -- to wait until after
24 the legislative session to allow the Secretary of State to put
25 in a briefing is very, very much the last minute.

1 I should say we sued the governor and we sued the
2 legislature, and they asked to be -- they moved to be dismissed.
3 And so we were surprised that they didn't want to be part of the
4 case, but they were dismissed at their request. We can move to
5 bring them back.

6 I don't quite see why, if the governor and the
7 legislature have views to present to this Court on what the map
8 should be, that they shouldn't be here presenting their views.

9 JUDGE WINSOR: Let me ask this about your point that
10 there is no reason to move forward now or -- versus waiting
11 three weeks to file your submission.

12 If your point is that 8060 is the appropriate map, and
13 you're going to try and demonstrate that with affidavits, or
14 otherwise, it may be that that's an issue that's going to be
15 litigated whether there is some problem with that map. I don't
16 know. I have no idea. But wouldn't it make sense to go ahead
17 and get that briefing in so that that issue can be related?

18 In other words -- as I understand the law, it would
19 not be something where we just choose between your map and their
20 map, whenever those maps are submitted. I mean, there is a lot
21 in between; isn't there?

22 MR. DISKANT: That is certainly true. A lot of
23 choices the Court can make.

24 My only point -- my only concern is it just doesn't
25 seem -- I hate to say "evenhanded," but evenhanded for us to be

1 briefing this and them doing nothing. I just don't understand
2 why it wouldn't be moving forward --

3 JUDGE JORDAN: It's not a doing nothing. Even under
4 the schedule you proposed you go first.

5 MR. DISKANT: That's what I -- oh, I'm sorry. Maybe
6 you are -- we may be proceeding on a misapprehension.

7 We proposed joint filings. Maybe we didn't say it
8 clearly enough but we certainly contemplated joint filings.

9 So, as I see it -- and that's because nobody is the
10 plaintiff with respect to the map. I mean, we are all just
11 putting forward remedies. So I contemplated -- and if that
12 wasn't clear, I apologize.

13 We contemplated parallel simultaneous filings. And
14 that's why I am objecting to going forward when they're not.

15 JUDGE WINSOR: But I don't understand that objection,
16 I guess. What is the harm of going forward with the discrete
17 issue of whether your map is the appropriate map? That issue
18 could be litigated separately.

19 MR. DISKANT: There is no horrific harm, Your Honor.
20 I am just trying to urge that the defendants be asked to go
21 forward also. We can go forward.

22 I mean, I should say if they are not going to have to
23 respond for three weeks, or so, I might ask for more than seven
24 days to get our papers in, but setting that aside, we can go
25 forward.

1 We care what the map is. We have an opinion about it.
2 We are prepared to present arguments about it. But I do think
3 that for this Court to be in a position -- not -- this is a
4 question for the Court. Not for me. But for this Court to be
5 in a position to act swiftly, in the event the state actors
6 fail, there should be briefings submitted by both sides on what
7 they propose is a remedy.

8 JUDGE WINSOR: I understand that argument.

9 MR. DISKANT: That's the entirety of my point.

10 JUDGE WINSOR: Okay.

11 Let me ask --

12 JUDGE JORDAN: Can I ask one question?

13 JUDGE WINSOR: Please. Sure.

14 JUDGE JORDAN: How long do you think -- again,
15 assuming everything remains the same, that there is no
16 legislative map in place, that both of you have submitted your
17 proposals, what do you think this trial is going to look like
18 and how long is it going to take?

19 MR. DISKANT: I would expect a day or two. I would
20 think that we would each present our experts, and present our
21 maps, and examine -- each side examine their experts. Few days,
22 max.

23 MR. JAZIL: Yes, Your Honor. That's seems appropriate
24 to me.

25 JUDGE JORDAN: Okay.

1 MR. DISKANT: Basically, in our view, you know, the
2 Court should set a deadline, as *Grove* suggests, for when the
3 state actors should act. And I would say the deadline should be
4 somewhere around say a week after the special session date. So
5 if it's April 21, let's talk about April 28.

6 We should be prepared to have a hearing, a live,
7 evidentiary hearing before this Court, on April 29, in the event
8 that there is no map, because the state actors -- the state
9 legislature, the governor, the state court haven't produced a
10 map and time is of the essence.

11 You're going to have to judge the time of the essence
12 accordingly, obviously, but if it's genuinely true that you
13 don't need a map until June 13, that's okay, but I don't believe
14 that to be correct.

15 JUDGE WINSOR: But if you're right on that point, and
16 a map has to be in place by, I think you said, the end of April
17 or the beginning of May.

18 MR. DISKANT: Yes.

19 JUDGE WINSOR: Isn't that asking a lot to say we will
20 have a trial on -- a two-day trial beginning on April 29th, and
21 then we have to have a final map by April 30th?

22 MR. DISKANT: I think we're jammed. I think we're
23 jammed as a result of the failure of the legislature and the
24 governor to create a map and to move expeditiously.

25 JUDGE WINSOR: My question though is what's the point

1 of having an April 29th trial if you are right that the final
2 map would have to be in place by April 30th?

3 MR. DISKANT: I am told by the evidence that six to
4 eight weeks -- six to eight weeks is April 29th and, I think,
5 May 14th. So there is a little space in there. I expect the
6 Court will be looking at these maps critically.

7 I don't know what the secretary will present, but my
8 guess is the universe of choices won't be all that large. And I
9 am perfectly content to move the date forward. I am just trying
10 to balance the Court's obligations under *Grove* to give a
11 reasonable deadline.

12 I mean, the deadline could be April 21. If the
13 special session doesn't produce a map, and we don't have a state
14 court map by then, let's have a hearing on April 23rd.

15 JUDGE JORDAN: What's your drop-dead date for a map to
16 be in place from what you have heard?

17 MR. DISKANT: I would like to reserve on that until I
18 see the declarations that we're going to file, but I think the
19 drop-dead date is probably around May --

20 JUDGE WINSOR: That's a critical point --

21 MR. DISKANT: May 13.

22 JUDGE WINSOR: That's a critical point, isn't it, in
23 terms of finding an appropriate schedule?

24 MR. DISKANT: Yes. Absolutely.

25 We had asked to have until Wednesday to put in papers

1 on this. And that's the best I can do, as I stand here.

2 JUDGE WINSOR: May 13?

3 JUDGE JORDAN: Mr. Jazil, how about on your side?

4 MR. JAZIL: Your Honor, our drop-dead date is June
5 13th, which is when the qualifying period for congressional
6 candidates begins.

7 JUDGE JORDAN: When does that period end?

8 MR. JAZIL: So it begins at noon on June 13th. It
9 ends noon on June 17th.

10 JUDGE JORDAN: You're going really close to the
11 razor's wire because you're giving people three days, four days,
12 to figure out if they are going to seek to qualify by petition,
13 or otherwise, in districts that are newly drawn.

14 In other words, people don't know where they are
15 running. People know where they are running before they seek to
16 qualify, in one way, shape, or form; right? But if you give
17 them -- if you give everybody a map on the 12th, you're giving
18 everybody less than 24 hours to figure out whether they're
19 running. And, if so, where they're running, and how they're
20 running, and what they're running for. That just seems like a
21 little bit of a tight window.

22 But I have never run for political office before so
23 maybe I'm missing something.

24 MR. JAZIL: Your Honor, as I understand it,
25 congressional candidates don't actually need to live within

1 their congressional districts, which gives them; A, greater
2 flexibility; B, if they are using the petition process, again,
3 Your Honor, the district lines aren't necessary for them to know
4 whether or not they have qualified through the petition process.

5 And, finally, Your Honor, if you're running for
6 congressional office you've likely filed your candidacy papers
7 with the federal elections commissioner well in advance, and
8 you've been raising money, and you've been going along the path
9 of seeking office.

10 So I would just note, yes, there is an inconvenience,
11 but there are other steps that serious candidates for
12 congressional office take well ahead of those deadlines. And we
13 don't expect that to change.

14 JUDGE WINSOR: But you have the drop-dead at June
15 13th?

16 MR. JAZIL: Yes.

17 JUDGE WINSOR: They have it at May 13th. Perhaps they
18 are right. Perhaps you are right. Perhaps it's somewhere in
19 between. But it seems to me that that would be a critical issue
20 to resolve before putting in place in any schedule in this case,
21 and I wonder if you were going to put in some affidavits this
22 week on that topic?

23 MR. DISKANT: Yes, Your Honor. We would be happy to
24 have a hearing if the Court prefers.

25 JUDGE WINSOR: Well, I was going to suggest it might

1 be -- I don't know what the affidavits will say, but it might be
2 helpful to have a reply from you all on that point.

3 MR. JAZIL: Yes, Your Honor.

4 With the Court's indulgence, I'd like to make an ore
5 tenus motion to file a reply.

6 MR. DISKANT: That seems reasonable.

7 JUDGE RODGERS: In what fashion are you submitting
8 these -- is this part of what you were proposing as far as the
9 April 11th deadline? You said you were going to submit
10 declarations --

11 MR. DISKANT: I'm sorry. We are going to submit
12 declarations demonstrating that the supervisors of elections
13 need these six to eight weeks before June 24 to have the
14 districts drawn so they can get the ballots prepared.

15 JUDGE RODGERS: Yeah. It seems like a critical
16 threshold issue that needs to be decided.

17 JUDGE JORDAN: You're going to do that in response to
18 their motion for stay?

19 MR. DISKANT: Yes. We're going to do that on
20 Wednesday.

21 JUDGE JORDAN: And then you will reply, so the request
22 to file a reply is granted.

23 MR. JAZIL: Yes, Your Honor.

24 Would it be appropriate to file a reply by Friday?

25 JUDGE JORDAN: You're filing your response when?

1 MR. DISKANT: We're filing it on Wednesday. I would
2 be happy to brief counsel on what I understand the facts to be
3 in more detail.

4 JUDGE JORDAN: Sure. Friday is fine.

5 MR. JAZIL: Thank you, Your Honor.

6 JUDGE JORDAN: The next procedural issue, as
7 Judge Winsor said, sometimes what a Court deems is appropriate
8 is somewhere between what the parties are proposing or
9 requesting, and so one of the things that we asked you to give
10 us some information on was what we should do if we decide, as a
11 three-judge court, to retain our own expert, and you've each
12 done that.

13 Do you have any thoughts on anything else that we need
14 to do if we decide to go down that route?

15 Mr. Diskant?

16 MR. DISKANT: I think if you do decide to go down that
17 route, we would like to make a submission to Your Honors about
18 the qualifications, why we recommend Professor Persily, and why
19 we oppose counsel -- the expert proposed by the Secretary.

20 JUDGE JORDAN: Mr. Jazil?

21 MR. JAZIL: Your Honor, I note that in the past other
22 courts have relied on two experts; one proposed by the
23 plaintiffs and one proposed by the defendants.

24 The Virginia Supreme Court proceedings come to mind
25 where, I believe, Mr. Trinity was the Republican intervenors' or

1 Republican respondents' -- it was unusual proceedings,
2 Your Honor. I apologize, Your Honor, if I'm not using the
3 appropriate nomenclature. But Mr. Trinity was proposed by one
4 side, and the Democrats had proposed someone else, and the Court
5 used two experts to help facilitate the process.

6 MR. DISKANT: I don't believe Professor Persily is a
7 Democrat expert. But in any event, you could have two experts,
8 or you could have submissions from us about which to select, or
9 you could not use an expert.

10 JUDGE JORDAN: Here -- I'm just trying to think of
11 this from a fact finder's perspective. So if the three of us
12 are unconvinced by a portion of either side's expert, right, how
13 do you think we're going to do this?

14 So the two -- let's give you a hypothetical to sort of
15 put this in concrete terms. Let's say that the map proposed by
16 one side seems to be generally correct to us, except that we
17 think it has problems with regards to the three congressional
18 districts. And we have a feeling amongst ourselves that those
19 three districts should be drawn somewhat differently than either
20 side proposes.

21 Who do we use to draw the district?

22 MR. DISKANT: In that circumstance, it makes sense, I
23 think, to use an expert.

24 JUDGE JORDAN: That's why the question was asked in
25 the order that went out requiring you to respond, because, you

1 know, we're not in the business of doing this sort of stuff day
2 in and day out. And there are a lot of things that go into
3 drawing district lines. So that's at least a concern.

4 I wanted you to know where we were coming from is the
5 difficulty of figuring out the logistics of doing this. If
6 we're at a point where we agree with one side or the other on
7 90 percent, but not on 10 percent, where do you go to find the
8 other 10 percent? How do you do it?

9 It's not like coming up with a remedy in tort where
10 you try to figure out apportionment, you know, and relative
11 negligence on both sides and figure out the appropriate remedy.
12 This is something a little more complicated than that.

13 All right. So why don't we do this? This -- I will
14 just do -- I haven't spoken to Judge Winsor and Judge Rodgers
15 about this -- but I am going to take the bull by the reins and
16 just do it.

17 By Thursday you will each file a memorandum in which
18 you will provide the pros about your proposed expert for the
19 Court, and the cons about the other side's proposed expert, and
20 why your expert, as a Court expert, would be preferable. So
21 you've got until the close of business Thursday to do that.

22 And if we decide to go down that road we will at least
23 have your thoughts on the issue.

24 JUDGE RODGERS: Could I ask that in connection with
25 the submissions that you include the curriculum vitae of the

1 experts obviously, please?

2 MR. DISKANT: Yes, Your Honor.

3 JUDGE JORDAN: So that's Thursday. Let's make sure we
4 have got all the procedural stuff we have taken today.

5 By Thursday you've got those responses on experts.

6 And then we're going to give the Secretary until
7 Friday to file the reply to their response to the motion for
8 stay.

9 JUDGE RODGERS: And the response to the complaint is
10 due by Friday.

11 MR. JAZIL: Yes, Your Honor.

12 JUDGE JORDAN: If this thing keeps going on a
13 remedies-only track, both of you see this playing out with
14 submissions of maps and affidavits or expert reports by your
15 side, a deposition by the opposing side of that person you're
16 putting forward, and then probably a two-day remedies trial;
17 right?

18 MR. DISKANT: Yes, Your Honor.

19 MR. JAZIL: Yes, Your Honor.

20 JUDGE JORDAN: Okay.

21 MR. DISKANT: And if I may, we had proposed three
22 rounds of simultaneous briefing. We can expedite that some more
23 by just making it two rounds.

24 JUDGE JORDAN: We'll have to talk about that amongst
25 ourselves and figure out what that should look like. But we

1 know what each side has proposed.

2 JUDGE WINSOR: Did someone say -- maybe it was
3 Ms. Ford -- that there is a status conference now set in the
4 state court case? I know they were trying to get one set. Is
5 one set?

6 MR. JAZIL: Yes. April 12th.

7 JUDGE WINSOR: April 12th?

8 MR. JAZIL: We will be filing a notice.

9 JUDGE WINSOR: Okay. Certainly, if any schedule is
10 set in that case it would be helpful for us to know that.

11 MR. JAZIL: Yes, Your Honor.

12 JUDGE JORDAN: I'm going to flip the table and ask if
13 you have any questions for us.

14 MR. DISKANT: I don't.

15 JUDGE JORDAN: On the plaintiffs' side? No? Okay.

16 MR. JAZIL: No questions, Your Honor, except I know we
17 have suggested in our papers that a lot of this work may be more
18 appropriate for the state court to --

19 JUDGE JORDAN: Here's -- again, we haven't talked
20 about what we're ultimately going to do, but that's not really
21 anything we can worry about right now because -- I would feel
22 differently, personally, if the state court had set a schedule
23 and was on the move to do something.

24 I have no idea what that state court status conference
25 is going to look like on the 12th, and what the state court is

1 going to do or not do. And, so, what that Court does may have
2 an impact on what we do, or how we do it, but at this point in
3 time we got to go.

4 MR. JAZIL: I understand, Your Honor.

5 JUDGE JORDAN: Because even if you are right that the
6 drop-dead date is June 13th, that's just barely over two months
7 away to redistrict the State of Florida congressionally. And
8 that's a big ask. So we got to get going.

9 And, so, that's why I suggested that when you have the
10 conference with the state court judge in a couple of weeks you
11 suggest that whatever -- whichever case goes forward, whichever
12 case takes the lead. Maybe they run on parallel tracks for
13 awhile. We don't know yet -- that you agree that whatever
14 discovery you take in the one case is going to govern in the
15 other case. And when you set depositions you list both cases
16 there so that there are problems or issues going forward.

17 That will at least make your lives a little bit more
18 easy as these two courts figure out how to go and what to do.

19 Both courts have jurisdiction and we will just have to
20 see how everything plays you out. We just don't know.

21 I don't know what the state judge's perspective on
22 moving this case forward, or trying it, is going to be.

23 MR. JAZIL: Understood, Your Honor.

24 I simply highlight for the Court that the remedies
25 stage would include compliance with the Florida Constitution and

1 its separate requirements, which we concur on certain *Pennhurst*
2 issues. I just underscore that for the Court as y'all are
3 considering these issues.

4 JUDGE JORDAN: I know. You've got -- but both courts
5 have their drawbacks, right, and their advantages. So here
6 you'd be asking a federal court to draw congressional maps and
7 comply with federal law, including the Voting Rights Act,
8 et cetera. And you would also be asking a federal court to
9 comply with a state constitutional mandate; right?

10 On the other side, you'd have a state court that is
11 presumably more familiar with the state constitution, but might
12 be less familiar with federal voting rights standards, although
13 it's certainly capable of resolving those and can.

14 MR. JAZIL: Understood, Your Honor.

15 JUDGE JORDAN: So we just got to go. For now we got
16 to go.

17 JUDGE WINSOR: I wanted to follow up with your point
18 about the parties and the proposed intervening complaint,
19 Ms. Ford.

20 You do have -- the proposed complaint that you had
21 filed with your papers does include those other defendants.

22 MS. FORD: Oh, it does, Your Honor.

23 JUDGE WINSOR: I just wanted to have the record clear.
24 You were saying if you were granted leave to intervene you would
25 file an amended intervenor complaint that would list only the

1 Secretary as a defendant?

2 MS. FORD: We can do that, Your Honor.

3 JUDGE WINSOR: I'm sorry?

4 MS. FORD: We can do that, Your Honor, if granted.

5 I also just want to make one brief comment, which was
6 in our joint report we had proposed this April 11th deadline for
7 the first submission of maps. Feels like we're not moving
8 towards that. But if this Court was going to impose that
9 deadline I would just ask that we learn that soon because I
10 think we are assuming at this point that we will --

11 JUDGE JORDAN: As things stand now, do you -- you
12 haven't been given leave to intervene yet, but you think you may
13 be submitting your own map?

14 MS. FORD: Yes, Your Honor.

15 JUDGE JORDAN: That complicates things. So all the
16 more reason to at least for now to set a schedule, go forward,
17 and then see where we are depending on what direction the state
18 court is going.

19 JUDGE RODGERS: Different from the 8060?

20 MS. FORD: Yes, Your Honor.

21 JUDGE WINSOR: So it wouldn't be a piggy-back
22 intervention then. In other words, you would be adverse to what
23 the plaintiffs are trying to do?

24 MS. FORD: We wouldn't necessarily be adverse. It
25 would be a different option for this Court to consider.

1 JUDGE WINSOR: You would be suggesting the right thing
2 to do would be not 8060; correct?

3 MS. FORD: Not necessarily. We are still -- we are
4 still working this out.

5 JUDGE WINSOR: But it's possible your position at
6 trial would be, to the Court, we ought not adopt what the
7 plaintiffs say we ought to adopt?

8 MS. FORD: At this point, Your Honor, it is possible
9 that we would suggest to the Court that 8060 is a good option
10 but also present one other option to this Court.

11 JUDGE JORDAN: This almost feels like interpleader.
12 The State of Florida has sort of dropped this in our laps and
13 said: We're out. And then you've got all of these parties, let
14 them sort out what's in the court treasury.

15 Okay. We will try to figure it out as best we can.

16 MR. JAZIL: Your Honor, in the interest of moving
17 things along, might I suggest that the intervenors be subject to
18 the same discovery guidelines that we've agreed to where they
19 depose our experts, we depose their experts, and that's the
20 extent of the discovery?

21 JUDGE JORDAN: There's not going to be any better or
22 worse treatment for them than anybody else. If they come into
23 the case they are going to have the same thing. They are going
24 to -- when we send out a schedule they're going to have a date
25 by which they are going to propose their map and their expert

1 and their evidentiary support. We're going to provide a
2 schedule for the depositions. And the same things on your side.

3 MR. JAZIL: Understood.

4 JUDGE JORDAN: So you will be taking two depositions
5 and they will each be taking one joint deposition.

6 Do you want any limit set on those depositions?

7 MR. JAZIL: Your Honor, since our witness will be
8 subject to two depositions, might I suggest --

9 JUDGE JORDAN: It will be one.

10 MR. JAZIL: So we'll have -- understood.

11 JUDGE JORDAN: I don't want your expert to have to
12 come twice on two days for two depositions. You can just do
13 them -- take a break and go back-to-back.

14 MR. JAZIL: Yes, Your Honor. I guess I was hoping not
15 to do a 14-hour deposition of our expert and just have one
16 seven-hour deposition, since I'm assuming --

17 JUDGE JORDAN: Give me -- I will hear from them in a
18 second. Give me a proposal.

19 MR. JAZIL: One seven-hour deposition of our expert.

20 JUDGE JORDAN: Okay.

21 MR. DISKANT: That sounds fine. With the request that
22 I'd be permitted, if for some reason after we see these reports,
23 to ask for slightly more time. I think seven hours should be
24 just fine.

25 JUDGE JORDAN: Okay.

1 Are there any availability issues with your experts
2 about when they can be deposed?

3 MR. JAZIL: I don't have one yet, Your Honor, so we
4 will figure that out.

5 JUDGE JORDAN: Hopefully you've thought about what
6 road you may have to go down if we are still stuck at this phase
7 in several weeks' time, Mr. Jazil.

8 MR. JAZIL: Yes, Your Honor.

9 MR. DISKANT: I don't have a calendar for the expert
10 in front of me, but I will check on that.

11 JUDGE JORDAN: What we will do is I think the easiest
12 thing for us to do, and to be fair and receptive to your
13 concerns, is to give you a window by which you have to complete
14 the depositions -- to start them and finish them -- and force
15 you to get together for a couple of days and just do them and
16 then we're done.

17 MR. JAZIL: Yes, Your Honor.

18 MR. DISKANT: Yep. That all makes sense.

19 JUDGE RODGERS: My thinking is we will have a schedule
20 in place for you next week. I mean, we can't do anything until
21 we make this decision about is it May 13th or June 13th, the
22 drop-dead date. And we won't have your full briefing on that
23 until Friday, I think. Wednesday for the plaintiffs. Friday
24 for the State.

25 So as soon as we have that then we can discuss a

1 schedule and get something in place for you.

2 JUDGE JORDAN: But so that you are not caught
3 offguard -- like I said we have not talked about this so I am
4 speaking only for myself -- but I want to give you a heads up so
5 that you are not caught by surprise. Given the concerns that
6 Judge Rodgers just articulated you should be looking at
7 April 15th, or thereabouts, for your first submission.

8 MR. DISKANT: Right. That would be simultaneous?

9 JUDGE JORDAN: What's that?

10 MR. DISKANT: Will that be simultaneous?

11 JUDGE JORDAN: Haven't decided yet. We haven't
12 talked.

13 MR. DISKANT: April 15. Thank you, Your Honor.

14 JUDGE JORDAN: You should be thinking about that date
15 as a target. We will have a better idea when we receive
16 everything that's going to come. You should be looking at that
17 date as a target. Whether it's simultaneous, or not, it's
18 certainly going to affect you, whatever date we pick. It will
19 be somewhere around there so we can get going.

20 MR. DISKANT: Thank you, Your Honor. I appreciate it.

21 JUDGE RODGERS: We do need to talk -- but I would say
22 to the State you indicated you don't have an expert yet. Maybe
23 don't have one in mind. But be thinking, you know, about those
24 issues because if -- I hope your confidence is well-founded and
25 there is a map that comes out of the special session. But if

1 not, my position -- and I don't want to speak for the other
2 judges -- would be that you will need to respond quickly,
3 particularly if we're on a May 13th deadline, obviously.

4 JUDGE JORDAN: Okay.

5 So, we are off-line a little bit by night but we will
6 take the journey with you. And we will try to figure out things
7 as we go and give you enough breathing room and move with enough
8 speed so that we can get everything done in the time we need to
9 get it done should there be nothing happening with the
10 legislature in a couple of weeks.

11 Okay?

12 MR. JAZIL: Yes, Your Honor.

13 JUDGE JORDAN: Anything else on either side?

14 MR. DISKANT: No. Thank you, very much.

15 JUDGE JORDAN: Mr. Jazil, anything on your side?

16 MR. JAZIL: No, Your Honor. Thank you.

17 JUDGE JORDAN: All right.

18 Maybe we will see you soon.

19 (Proceedings concluded at 10:56 on Monday, April 4, 2022.)

20 * * * * *

21 I certify that the foregoing is a correct transcript
22 from the record of proceedings in the above-entitled matter.
23 Any redaction of personal data identifiers pursuant to the
Judicial Conference Policy on Privacy are noted within the
transcript.

24 /s/ Lisa C. Snyder

2/1/2023

25 Lisa C. Snyder, RPR, CRR
Official U.S Court Reporter

Date