UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JULIE CONTRERAS, IRVIN FUENTES, ABRAHAM MARTINEZ, IRENE PADILLA, and ROSE TORRES

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS, CHARLES W. SCHOLZ, IAN K. LINNABARY, WILLIAM J. CADIGAN, LAURA K. DONAHUE, WILLIAM R. HAINE, WILLIAM M. MCGUFFAGE, KATHERINE S. O'BRIEN, and CASANDRA B. WATSON in their official capacities as members of the Illinois State Board of Elections, DON HARMON, in his official capacity as President of the Illinois Senate, and THE OFFICE OF THE PRESIDENT OF THE ILLINOIS SENATE, EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives, and the OFFICE OF THE SPEAKER OF THE ILLINOIS HOUSE OF REPRESENTATIVES,

Defendants.

Case No. 1:21-cv-03139

Circuit Judge Michael B. Brennan
Chief District Judge Jon E. DeGuilio
District Judge Robert M. Dow, Jr.

Three-Judge Court
Pursuant to 28 U.S.C. § 2284(a)

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT AND IN RESPONSE TO LEGISLATIVE DEFENDANTS' OPPOSITION

Plaintiffs Julie Contreras, Irvin Fuentes, Abraham Martinez, Irene Padilla, and Rose Torres ("Plaintiffs") file this reply in support of their motion for summary judgment (Dkt. 63) and memorandum of law in support (Dkt. 65) under Local Rule 56.1(c)(1), and in response to Defendants Welch, Office of the Speaker, Harmon, Office of the President's ("Legislative Defendants") Opposition to Plaintiffs Motion for Summary Judgment. *See* Dkt. 82 ("Legislative Defs.' Opp'n"). Plaintiffs are entitled to declaratory judgment on their malapportionment claim

raised in their Motion for Summary Judgment. Legislative Defendants filed their opposition to Plaintiffs' motion on September 10, 2021, 9 days after they represented to the Court that newly passed plans were sent to Illinois Governor J.B. Pritzker for signature.[1] However, as of the date of this filing, Governor Pritzker has yet to sign the plans passed by the General Assembly on August 31, 2021 as Senate Bill 0927 ("August Plans"). Therefore, it is undisputed that the only state legislative plans in effect are severely malapportioned plans that violate Plaintiffs' right to equal representation under the Fourteenth Amendment.[2] Judgment should issue on that violation, and the remedy phase should commence as soon as possible so that legal plans can be approved by the court in time for the deadlines associated with the March 2022 primary.

Legislative Defendants fail to show in their opposition why Plaintiffs are not entitled to summary judgment. They do not raise any genuine dispute as to the degree to which the House and Senate maps enacted as part of Public Act 102-0010 on June 4, 2021 ("Enacted Plans") are unconstitutionally malapportioned. Plaintiffs have shown that the Enacted Plans are malapportioned beyond tolerable limits and that Legislative Defendants have provided no rationale for the plans even if they were not beyond such limits. Plaintiffs have standing to bring their malapportionment claims. Furthermore, Legislative Defendants fail to raise any genuine dispute of material fact that American Community Survey data do not provide a population basis on which to base total population apportionment of state legislative districts.

Finally, Plaintiffs address the Court's questions regarding a remedial phase, which the Court must enter once it grants Plaintiffs' motion.

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[1] *See* Hr'g Tr. (Sept. 1, 2021) at 7:25-8:18.

[2] The last "Action" listed on the Illinois General Assembly website is "Sent to the Governor," dated September 2, 2021. Bill Status of SB0927, 102nd General Assembly – 1st Special Session, https://ilga.gov/legislation/billstatus.asp?DocNum=927&GAID=16&GA=102&DocTypeID=SB&LegID=133554&SessionID=111&SpecSess=1#actions (last accessed on Sept. 14, 2021).

ARGUMENT

I. Legislative Defendants Fail To Raise A Genuine Dispute Of The Material Facts Showing That The Enacted Plan Is Unconstitutionally Malapportioned.

Plaintiffs provide evidence in support of their motion for summary judgment showing that the Enacted Plans are malapportioned beyond tolerable limits Legislative Defendants do not dispute this evidence. Rather, Legislative Defendants incorrectly describe their burden under malapportionment precedent and fail to identify a rational state policy that the Enacted Plans advance.

1 Legislative Defendants do not dispute that the Enacted Plans are malapportioned beyond justification.

Legislative Defendants do not meet their burden to defeat Plaintiffs' motion for summary judgment. "Once the moving party puts forth evidence showing the absence of a genuine dispute of material fact, the burden shifts to the non-moving party to provide evidence of specific facts creating a genuine dispute." *Carroll v. Lynch*, 698 F.3d 561, 564 (7th Cir. 2012) (internal citation omitted).

In support of their motion for summary judgment, Plaintiffs provide David R. Ely's expert analysis of the degree to which the Enacted Plans are malapportioned. Mr. Ely's calculations establish that the House Plan enacted in June has an overall variance, or maximum deviation, of 29.9%, and the Senate Plan enacted in June has a maximum deviation of 20.3%. *See* Plaintiffs' Statement of Material Facts (Dkt. 66) ("SOF") ¶¶ 34-39; Exhibit A, David Ely Declaration (Dkt. 66-1). Plans with such maximum deviations exceed "tolerable limits" that cannot be justified with a rational policy. *See* Plaintiffs' Memorandum of Law In Support of Their Motion for Summary Judgment (Dkt. 65) ("Pls.' Mem.") at 11; *see also Mahan v. Howell*, 410 U.S. 315, 329, *modified*, 411 U.S. 922 (1973) (warning that 16% maximum deviation approaches "tolerable limits").

Legislative Defendants fail to offer any expert testimony or evidence that would contradict Mr. Ely's calculations, and do not dispute Mr. Ely's calculations. *See* Defendants' Response to Plaintiffs' Statement of Material Facts (Dkt. 83) ("Defs.' Resp. to SOF"); *see also* Defendants' Statement of Additional Material Facts (Dkt. 84) ("DSOF"). Legislative Defendants' statement of additional material facts includes no evidence regarding the deviations of districts in the Enacted Plans using Census 2020 P.L. file data. *See* DSOF. In their response to Plaintiffs' statement of material facts, Legislative Defendants merely respond, "Admit this is Mr. Ely's calculation" without offering any reason to dispute those calculations. Defs.' Resp. to SOF ¶¶ 34-39. Neither of Legislative Defendants' expert witnesses provides analysis of Mr. Ely's calculations. *See* DSOF.

Plaintiffs present evidence for the specific material facts that the Enacted House Plan and Senate Plan have maximum deviations greater than tolerable limits, greater than what could possibly be justified by Defendants. These specific facts raise the absence of a genuine dispute of material fact. *See Carroll v. Lynch*, 698 F.3d at 564. Plaintiffs are entitled to judgment as a matter of law. *See id*.

2 Legislative Defendants fail to provide a rational basis for their plan.

Legislative Defendants cannot defend their Enacted Plans as a matter of law with what they claim is a rational state policy because of how exceedingly malapportioned the plans are. *See Mahan*, 410 U.S. at 326 ("[A] [s]tate's policy urged in justification of disparity in district population, however rational, cannot constitutionally be permitted to emasculate the goal of substantial equality."); *see also* Pls.' Mem. at 9-11. Even if the Enacted Senate and House Plans do not have maximum deviations that unquestionably exceed the barely "tolerable limits" of 16% approved by *Mahan v. Howell*, 410 U.S. at 329, Legislative Defendants would not be able to defend the Enacted Plans.

Were the plans within "tolerable limits," but high enough to require justification, Legislative Defendants would correctly state their defensive burden. *See* Legislative Defs.' Opp'n at 8-9; *see also Brown v. Thomson*, 462 U.S. 835, 842-843 (1983) (plans with deviations over 10% may be considered constitutional if they "may reasonably be said to advance [a] rational state policy"). The "rational state policy" that the Enacted Plans advance according to Legislative Defendants, however, is neither rational nor longstanding as precedent illustrates. Legislative Defendants claim that the rational state policy was to use ACS data to have a plan in place before June 30, 2021, which they claim is an Illinois constitutional mandate, and to do so in time for the 2022 midterm election year. *See* Legislative Defs.' Opp'n at 10.

Legislative Defendants ignore that the Illinois Constitution provides for redistricting beyond June 30, 2021, and neglect to mention that the Legislative Redistricting Commission has approved state legislative plans before. The Illinois Constitution provides for redistricting by the Legislative Redistricting Commission if the General Assembly cannot pass a map by the end of June, as Plaintiffs indicated in their memorandum of law in support of their motion for summary judgment. *See* Pls.' Mem. at 10-11 (citing Illinois Constitution, Article IV, sec. 3). It allows the Commission to pass a map as late as October 5 in the year following the federal decennial census. *See* Illinois Constitution, Article IV, sec. 3 ("Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members"). Furthermore, such a map approved by the Legislative Redistricting Commission is "presumed valid" if submitted by October 5. Rather than allow a Legislative Redistricting Commission to approve a plan based on the 2020 Census P.L. file data, Legislative Defendants chose to enact redistricting plans in June using ACS data, which do not reflect an enumeration of total population.

Defendants' stated policy is less one that is legitimate in terms of state policy and more one that is a matter of political preference that the General Assembly perform redistricting rather than the Commission. That policy can hardly be said to be rational if the state's Constitution specifically allows the Commission to approve maps. The Illinois Constitution's creation of a Commission has been upheld by the Supreme Court of Illinois. *See People ex rel. Scott v. Grivetti*, 50 Ill. 2d 156, 160–61, 277 N.E.2d 881, 884–85 (1971) (provision for redistricting by Commission in Ill. Const. does not raise question of improper delegation of legislative power).

Nonetheless, Legislative Defendants would have the Court believe that passage of the redistricting plans by the General Assembly, rather than by the Legislative Redistricting Commission is a rational state policy like those that have justified non-equipopulous maps in other cases. However, policies in other cases have been those that are legitimate and "longstanding." *See Brown v. Thomson*, 462 U.S. at 843, 847 (state plan with greater than 10% maximum deviation constitutional where it advanced "longstanding" policy of preservation of county boundaries that had been followed since statehood); *see Mahan*, 410 U.S. at 325 (map upheld where policy was "integrity of political subdivision lines"). The General Assembly's political preference to draw the maps is certainly not longstanding. To the contrary, enactment of a map by the Legislative Redistricting Commission is more of a longstanding policy than enactment by the General Assembly. In Illinois, the Legislative Redistricting Commission has approved redistricting maps that courts later upheld in every decade since 1970, with the exception of 2011.[3] *See League of Women Voters v. Quinn*, No. 1:11-cv-05569, 2011 WL 5143044 (N.D. Ill. Oct. 28, 2011), *aff'd*,

[3] "Illinois has never enacted a law redrawing General Assembly districts by the deadline set in the 1970 Constitution[…]Instead, redistricting commissions, appointed under the Constitution, proposed redistricting plans." "Illinois Redistricting History Since 1970," Illinois General Assembly Research Response, Legislative Research Unit, May 28, 2008, found at https://www.ilga.gov/commission/lru/28.RedistrictingSince1970.pdf (accessed Sept. 13, 2021).

132 S. Ct. 2430 (2012) ("case challenges the General Assembly Redistricting Act of 2011, which cemented Illinois's proposed new map of 118 House districts and 59 Senate districts").

Legislative Defendants' secondary alleged policy justification—use of American Community Survey data as the "best available" population data—also contradicts rationality and sound legal policy. *See* Pls.' Mem. at 8-9. The ACS does not provide population data, but rather utilizes population *estimates*. *See id*., SOF ¶20-22. Defendants responded that they "Admit" these facts that Plaintiffs offer. *See* Defs.' Resp. to SOF ¶¶ 20-22.

Nevertheless, Legislative Defendants argue that federal precedent permits them to use estimates of population rather than population data. *See* Defs.' Opp'n. at 10-11. Legislative Defendants misuse and misrepresent voting rights authority in order to make this argument. They cite *Burns v. Richardson*, 384 U.S. 73, 91 (1976), for the proposition that a state's choice of apportionment base—voter registration—was upheld. *See* Defs.' Opp'n. at 11. However, *Burns v Richardson* refers to using total counts of registered voters *versus* total counts of population or some other universe of persons in Hawaii, not the specific data source that provides those numbers, and certainly not population or registration estimates based on samples. *See id*. at 94 (Hawaii's constitutional convention "discussed three possible measures, total population, state citizen population, and number of registered voters, in considering how the State House of Representatives should be apportioned"). *Evenwel* discusses the use of different population *bases*, not the sources that give the numbers for those bases. *See Evenwel v. Abbott*, 577 U.S. 937 (2016) (plaintiffs contended that "the Equal Protection Clause requires jurisdictions to draw state and local legislative districts with equal voter-eligible populations" versus total population). The Alabama case that Defendants cite does say that Alabama could have used other data to determine total population, as Defendants argue, but that alternative data in question would have come from

a census or enumeration conducted by the state, as provided for by the Alabama Constitution. *See Alabama v. United States Dep't of Com.*, No. 321CV211RAHECMKCN, 2021 WL 2668810, at *6 n.3 (M.D. Ala. June 29, 2021) ("rather than carry out its own statewide census, the State asserts that it has a reliance interest on the Bureau's forthcoming redistricting numbers and cannot now be expected to expend the resources necessary to conduct its own head count"). Finally, Legislative Defendants cite *Tucker v. U.S. Dep't of Com.*, which is about adjustment of Census figures due to an alleged undercount, not advocacy for apportionment based on an alternative estimation data set for total population. *See Tucker v. U.S. Dep't of Com*., 958 F.2d 1411, 1418 (7th Cir. 1992).

The above "chorus of precedents" (Defs.' Opp'n. at 11) that Defendants cite in opposition to Plaintiffs' malapportionment claim is, at best, a quartet of inapplicable authority. In this case, Legislative Defendants do not contend that there is a debate about whether to use total population counts versus counts of registered voters such as in *Burns* and *Evenwel*. Defendants contend that ACS data provides a sufficient estimate of total population. DSOF ¶ 7. In fact, their own redistricting law states that they seek to base apportionment on total population, not registered voters, U.S. citizenship, or voting age population. *See* Public Act 102-0010, Sec. 5(d) ("The total resident population of Illinois according to the 2015-2019 American Community Survey data was 12,770,577"). This case also does not deal with the adjustment of Census P.L. file data as the plaintiffs do in *Alabama v. United States Dep't of Com* and *Tucker v. U.S. Dep't of Com*. Defendants' authorities lend support to Plaintiffs' claim that the ACS as a sampling of persons, rather than a count or enumeration, cannot be a source of total population data. *See Tucker v. U.S. Dep't of Com*., 958 F.2d 1411, 1412, 1418 (7th Cir. 1992) ("The decennial census is a headcount rather than an estimation based on sampling").

II. Plaintiffs' Statement Of Material Facts And The Record Establish That They Have Standing, Contrary To Legislative Defendants' Arguments

Legislative Defendants' argument that Plaintiffs lack standing misstates the record and the law. Legislative Defendants principally cite *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018)—not a malapportionment case. The proper standard for standing on Plaintiffs' claims comes from *Reynolds v. Sims*, where the state failed to enact maps that were "apportioned on a population basis" and were therefore "constitutionally invalid." *See Reynolds v. Sims*, 377 U.S. 533, 568 (1964). Therefore, standing for Plaintiffs' claim that the Enacted Plans are malapportioned because they are not based on a population basis is present for all Plaintiffs because all persons in the state are harmed by an unequal map not drawn on a population basis. *See* Defs.' Resp. to SOF ¶¶ 1-5 (admitting that Plaintiffs are registered voters in residing in Illinois).

Plaintiffs also meet the standing test for a "traditional" one-person, one vote claim under *Reynolds v. Sims.* Under a traditional one person, one vote claim, "the Supreme Court has conclusively established in [*Baker v. Carr*, 369 U.S. 186, 204-208 (1962)], and *Reynolds v. Sims*, 377 U.S. 533, 554-561 (1964), that sufficient damage through underrepresentation to obtain standing will be inflicted if population equality among voting units is not present." *See Fairley v. Patterson*, 493 F.2d 598, 603 (5th Cir. 1974). "However, injury results only to those persons domiciled in the under-represented voting districts." *Id.* (citing *Skolnick v. Board of Commissioners of Cook County*, 435 F.2d 361 (7th Cir. 1970)).

Legislative Defendants incorrectly state that Plaintiffs have not presented evidence proving injury. Each individual Plaintiff alleges in the First Amended Complaint that he or she lives in a district that is malapportioned. *See* Contreras Plaintiffs First Amended Complaint ("FAC") (Dkt. 37) ¶¶ 10-14. Legislative Defendants then admit that Plaintiffs Irene Padilla and Rose Torres live in Representative District 6 in the Enacted Plans. Defs.' Resp. to SOF ¶¶ 4, 5. The text of the law

containing the Enacted Plans states that Representative District 6 is one of the component Representative Districts of Legislative District 3. *See* Public Act 102-0010, Sec. 15 ("Legislative District No. 3 consists of Representative Districts Nos. 5 and 6."). Legislative District 3 is also known as Senate District 3. *See id*. at Sect. 29C-10 ("Senators shall be elected from districts in each group of legislative districts"). Legislative Defendants admit and do not contest with different facts that Senate District 3 has a deviation of 12.3%, making it the most overpopulated district in the Senate Map. *See* SOF ¶ 35; *see also* Defs.' Resp. to SOF ¶ 35; Ely Table 2. Therefore, Plaintiffs Irene Padilla and Rose Torres live in the most underrepresented Senate District in the Enacted Plans.

Plaintiffs Julie Contreras, Irvin Fuentes, Irene Padilla, and Rose Torres all live in overpopulated Representative (House) and Legislative (Senate) Districts. *See* SOF ¶¶ 1-5; 39 (citing Ely Declaration (Dkt. 66-1), Ely Tables 1 and 2). Therefore, each of these Plaintiffs, in addition to their claim regarding the failure to use P.L. file Census data, has standing because he or she lives in a district in which residents' representation is diluted by the malapportioned Enacted Plans.

III. Plaintiffs' Malapportionment Claim Is Not Moot

Legislative Defendants incorrectly argue that Plaintiffs' claims are moot due to the General Assembly's passage of new redistricting plans on August 30, 2021, and August 31, 2021. *See* Defs.' Opp'n. at 6-7.

As an initial matter, the Governor of Illinois has yet to sign the August 2021 plans. Therefore, Plaintiffs' claims present live controversies. *See Brown v. Kentucky Legislative Rsch. Comm'n, 966 F. Supp. 2d 709, 718* (E.D. Ky. 2013), *judgment entered*, No. CV13CV25DJBGFVTWOB, 2013 WL 12320875 (E.D. Ky. Oct. 31, 2013) ("The injury claimed

by the Plaintiffs is vote dilution caused by malapportionment of the 2002 legislative districts, which is an injury that is current and on-going[…]Further, as those districts are still in place, nothing has occurred to render them moot.").

Furthermore, the Court has yet to address a constitutional violation committed by Legislative Defendants that very well may be repeated in the near or distant future. *Ciarpaglini v. Norwood,* 817 F.3d 541, 544–45 (7th Cir. 2016) (internal citations omitted) ("the mere cessation of the conduct sought to be enjoined does not moot a suit to enjoin the conduct, lest dismissal of the suit leave the defendant free to resume the conduct the next day"). In order to prove mootness regarding the Enacted Plans due to passage of new plans, Legislative Defendants must show that "subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Ciarpaglini v. Norwood*, 817 F.3d 541, 545 (7th Cir. 2016). Even after Gov. Pritzker signs the plan, there is a live controversy. Legislative Defendants may have passed a new plan, but, as their briefing on this motion demonstrates, they have not abandoned their position that the ACS is the best available data. There would be nothing to stop Defendants from reverting to the June 2021 plan without a declaratory judgment. Until the Court rules that the June 2021 Enacted Plans were malapportioned, this case is not moot.

IV. The Court May Proceed To A Remedial Phase To Oversee Enactment Of Legal Maps After Entering

The court has asked the parties to address three specific questions regarding the remedy phase of this lawsuit (Dkt. 72 at 1):

1 - What triggers a remedial phase?

Defendants and Plaintiffs do not disagree about when and how the remedial phase is triggered: when the court issues a decision declaring the ACS maps unlawful, the remedial phase

is triggered. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). When it is established that a map is unlawful, plaintiffs are entitled to a districting plan that fully remedies the any violation. *See Patino v. City of Pasadena,* 230 F. Supp. 3d 667 (S.D. Tex. 2017), *judgment entered*, No. CV H-14-3241, 2017 WL 10242075 (S.D. Tex. Jan. 16, 2017); *see also Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1414-15 (E.D. Wash. 2014) (finding that the plaintiffs were entitled to an injunction enjoining defendants from administering, implementing, or conducting any future elections for the City of Yakima under the unlawful method of electing City Council members); *Bone Shirt v. Hazeltine*, 700 N.W.2d 746, 756 (S.D. 2005) ("[¶ 27.] On the other hand, once it is determined by a court that a legislative redistricting plan is invalid, equal protection demands a remedy.").

2 What possible remedies can be fashioned during a remedial phase?

Defendants are correct in noting that they and the General Assembly are due an opportunity to remedy any legal and constitutional defects during the remedial phase. *Veasey v. Abbott*, 830 F.3d 216, 270 (5th Cir. 2016) ("Indeed, when feasible, our practice has been to 'offer governing bodies the first pass at devising' remedies for Voting Rights Act violations."); *Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 767-68 (9th Cir. 1990) (following liability findings, the district court appropriately gave the County the opportunity to propose a new plan); *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022 (8th Cir. 2006) ("As required, the defendants were afforded the first opportunity to submit a remedial plan").

Defendants argue, however, that because they are to receive a first opportunity at drawing the remedial map and because they have begun the process of drawing a map that accords and complies with the Constitution and all relevant laws, it would be pointless for this Court to issue a decision declaring the June maps unconstitutionally malapportioned and initiating the remedial phase. Legislative Defs.' Opp'n at 14.

Defendants are incorrect. For the reasons set forth above and in Plaintiffs' Motion for Summary Judgement, Plaintiffs are entitled to an order finding that the June maps, the only maps currently in effect, are unconstitutionally malapportioned. Once a violation has been established, Plaintiffs are entitled to a remedial districting plan that fully remedies the malapportionment violation and complies with federal law. *See Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *see also Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1144 (E.D. Cal. 2018) (The case must proceed to a remedial phase upon finding a violation of Section 2 of the voting Rights Act); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377, 1414-15 (E.D. Wash. 2014) (finding that the plaintiffs were entitled to an injunction enjoining defendants from administering, implementing, or conducting any future elections for the City of Yakima under the unlawful method of electing City Council members).

"In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)*; see also Mahan v. Howell*, 410 U.S. 315, 332 (1973). Here the Court faces severe time pressures with deadlines to register for upcoming Illinois primaries in March of 2022. Deferring the remedial phase would unnecessarily delay the ultimate resolution of this case substantially.[4] *See Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 859 (E.D. Wis. 2012) (ordering defendant to act quickly to propose a remedial plan and noting that "[t]his should not be an impossible task, given that [plaintiffs' expert] has prepared at least one alternative configuration that should be a useful starting point.").

[4] Absent an order on the pending summary judgement order, the parties may file amended complaints, triggering another round of briefing on motions to dismiss and motions for summary judgment and the potential need to resolve this case during a lengthy bench trial. In contrast, if the Court grants Plaintiffs' motion for summary judgment now, and the Court could resolve any questions about the lawfulness of any remedial map following remedial briefing and a remedial hearing if necessary.

3 To the extent a remedy is necessary how should the court choose one?

The Court can choose an appropriate remedy by ensuring that any new maps comply with federal law and the constitution under well-established legal standards. Any map that Defendants propose will not only have to be sufficiently equipopulous to satisfy the Fourteenth Amendment but will also have to comply with Section 2 of the federal Voting Rights Act and the Fourteenth Amendment's prohibition of racial gerrymandering as interpreted in *Thornburg v. Gingles* and *Shaw v. Reno.*

In deciding which remedies are appropriate to ensure a lawful map, a "district court [] must undertake an 'equitable weighing process' to select a fitting remedy for the legal violations it has identified, [] taking account of 'what is necessary, what is fair, and what is workable.'" *North Carolina v. Covington,* 137 S.Ct. 1624, 1625 (2017) (internal citations and quotation marks omitted). The Supreme Court has suggested a number of considerations that a district court should weigh when deciding whether to institute a remedy, including 1) "the severity and nature of the particular constitutional violation," 2) "the extent of the likely disruption to the ordinary processes of governance if" the remedy is imposed, and 3) "the need to act with proper judicial restraint when intruding on state sovereignty." *Id*. at 1625-26.

Upon entry of judgement on Plaintiffs' motion, the court should schedule remedial proceedings to ensure that Defendants proposed plans comply with federal law and fully remedy the violation.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion for summary judgment, enjoin the June 2021 Enacted Plans, and enter remedial proceedings.

Dated: September 14, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2021, a copy of the foregoing document was filed electronically in compliance with Local Rule 5.9.

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