

**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’ REPLY IN SUPPORT OF THEIR RULE 59(e) MOTION TO
AMEND JUDGMENT TO RETAIN JURISDICTION REGARDING REMEDY**

Defendants appear to agree with plaintiffs, as stated in their Response to Plaintiffs’ Rule 59(e) Motion to Amend Judgment to Retain Jurisdiction Regarding Remedy (dkt. #187), that the Court’s judgment dismissing the above-captioned case (dkt. # 183) does not affect the Court’s ability to enforce its order and injunction (dkt. #182) permanently enjoining Act 43’s redistricting plan and providing the Legislature with an opportunity to enact a new plan that complies with the Court’s November 21, 2016 opinion and order. *See* dkt. #187 at 1-3 (noting that “not expressly retaining jurisdiction does not leave...this Court powerless to enforce [its] injunction[] because district courts ‘automatically retain[] jurisdiction to enforce’ injunctions” and that “[the Court] has [the power to enforce its judgment] irrespective of whether the judgment specifically says so.”).

Defendants also concede in their response that the Court's ability to enforce its injunction includes making sure that the Legislature timely enacts a new plan, stating that "[s]hould 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." Dkt. #187 at 2. Defendants further appear to agree, but do not explicitly state in their brief, that the Court's ability to enforce its injunction includes ensuring that any new plan enacted by the Legislature in fact remedies the constitutional defects outlined in the Court's November 21, 2016 order. *Id.* at 1-2.

Given defendants' apparent agreement that the Court can and should retain jurisdiction not only to enforce a timely remedy, but also to entertain future challenges to any new plan enacted by the Legislature, plaintiffs' motion to amend the January 27, 2017 judgment (dkt. #183) should be granted to make the Court's retention of jurisdiction explicit.

Finally, defendants state that plaintiffs' pending Rule 59(e) motion (dkt. #185) prevents defendants from appealing the above-captioned case under Fed. R. App. P. 4(a)(4)(B)(i). *See* dkt. #187 at 3. That is wrong. The Federal Rules of Appellate Procedure apply only to appeals to the Courts of Appeals, not to direct appeals to the U.S. Supreme Court. In any event, plaintiffs' Rule 59(e) motion is aimed solely at the judgment entered by the Court dismissing the case (dkt. #183), and does not affect defendants' ability to appeal the Court's entry of a permanent injunction (dkt. #182). *See* 28 U.S.C. §1253; *see also* 28 U.S.C. §2101(b). Accordingly, defendants' time to appeal runs from January 27, 2017, the date on which the Court entered its judgment and injunction.

For the foregoing reasons, plaintiffs respectfully request that the Court grant their motion to amend the judgment issued on January 27, 2017, to include a provision expressly stating that the Court retains jurisdiction to enforce its injunction and order.

Dated this 16th day of February, 2017.

Respectfully submitted,

/s/ Annabelle E. Harless_____

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