IN THE SUPREME COURT OF FLORIDA

THE LEAGUE OF WOMEN VOTERS OF FLORIDA, et al.,
Appellants,
v.

KEN DETZNER, et al.,
Appellees.

Case No.: SC14-1905
L.T. Nos.: 1D14-3953
2012-CA-00412
2012-CA-00490

COALITION APPELLANTS' RESPONSE TO HOUSE'S MOTION FOR FURTHER RELINQUISHMENT OF JURISDICTION

Appellants, The League of Women Voters of Florida, Common Cause, Brenda Ann Holt, J. Steele Olmstead, Robert Allen Schaeffer, and Roland Sanchez-Medina, Jr. (collectively, "Coalition Appellants"), oppose the House's Motion for Further Relinquishment of Jurisdiction and state as follows:

1. In considering an appropriate remedy for the Legislature's violation of Article III, Section 20 of the Florida Constitution, this Court "reject[ed] the Legislature's argument that this Court has no authority to adopt a plan" and acknowledged that "state courts are empowered to enact constitutional redistricting plans for the United States Congress 'when the legislature fails to do so.' " *League of Women Voters of Fla. v. Detzner*, No. SC14-1905, 2015 WL 4130852, at *43-*44 (Fla. July 9, 2015) ("*Apportionment VII*") (quoting *People ex rel. Salazar v. Davidson*, 79 P.3d 1221, 1232 (Colo. 2003)). But because the Legislature had not—up until that point—"failed to conform to a ruling from this Court requiring it

to adopt constitutionally compliant congressional districts," this Court stayed its hand and declined to exercise its authority to draw a remedial map. *Id.* at *44. Instead, this Court found that "the appropriate remedy at this juncture is to require the Legislature to redraw the map, based on the directions set forth by this Court." *Id.* Accordingly, this Court relinquished jurisdiction "for a period of 100 days from the date of this opinion, with directions that [the trial court] require the Legislature to redraw" the invalidated districts "on an expedited basis." *Id.* at *3.

2. After the trial court complied with that directive and gave the Legislature until August 25, 2015, to adopt a remedial plan, the Legislature convened a special session that ended without a new map. The trial court then reported that the Legislature was "unable to comply with [its] directive" to draw a remedial plan (Order on Remedial Relinquishment at 2), meaning that the Legislature has "failed to conform to a ruling from this Court," *Apportionment VII*, 2015 WL 4130852, at *44.

3. Coalition Appellants agree with the House that "the trial court cannot fulfill the purpose of this Court's relinquishment and … has no authority to undertake any additional remedial proceedings" without further action by this Court. (House Mot. at 2.) This Court should reject the Senate's invitation to take a "wait-and-see" approach to whether the Legislature will suddenly resolve its differences, call another special session, and adopt a remedial plan at some

unknown time in the future. Although the Senate suggests that it "remains open to further negotiations with the House and is ready, willing, and able to reconvene in special session" (Senate Resp. at 2-3), the House has been clear that it "does not anticipate that the Legislature will enact a remedial plan in advance of the 2016 elections," (House Mot. at 3). The trial court likewise recognized that "it appears unlikely that a Legislative plan will be provided to [it] for review, in a timely fashion." (Order on Remedial Relinquishment at 2.) Nearly two months have been lost already, and the remaining time before the 2016 elections is far too limited—and the stakes far too high—to delay a remedy based on unjustified and speculative optimism.

4. Coalition Appellants disagree with the House on the proper response to the Legislature's failure to comply with judicial directives. For the House, the remedy for disregarding this Court's mandate is to enlarge the relinquishment period, expand the remedial proceedings, and minimize the authority of the judiciary. Under the House's proposed procedures, the trial court would oversee discovery and then conduct an evidentiary hearing on multiple proposed plans and issue findings of facts and conclusions of law endorsing one of the plans proposed by the parties. (House Mot. at 4.) The House then insists that any plan adopted by this Court should be declared "interim" or "provisional" with an invitation for the

Legislature to unwind the remedial plan "by subsequent legislation" at a time when there would presumably be no ongoing judicial oversight. (*Id.* at 3.)

5. In considering a remedy, this Court made it abundantly clear that time is of the essence because "this litigation has now spanned more than three years and the qualifying period for the next congressional election of 2016 is not far away." *Apportionment VII*, 2015 WL 4130852, at *47. That was, after all, the very reason why this Court decided to relinquish jurisdiction on a limited and expedited basis. And this Court relinquished jurisdiction for a very specific purpose – *i.e.*, to allow the Legislature to enact a remedial plan and to permit the trial court to conduct an evidentiary hearing directed to a **legislatively enacted** plan.

6. Faced with the Legislature's disregard of its mandate, this Court should promptly adopt a remedial plan. The task of judicially adopting districts is fundamentally different from review of legislatively drawn districts. Based on the competing maps adopted by the House and Senate, Coalition Appellants do not see a need for further discovery to challenge those plans beyond what this Court has already recommended the Legislature to provide. *See id.* at *46.

7. Trial court review would, therefore, add a needless second layer of proceedings and associated delay without significant benefits. While the trial court is in a superior position to resolve disputes of fact, there will not be extensive issues of fact in the traditional sense. The question now is how to draw a

constitutional map. Unlike the trial court, this Court has acquired and utilized Maptitude software, and thus is able to effectively evaluate the data necessary to draw and consider alternative district configurations.

8. Moreover, this Court already has an analogous constitutional duty to be the body that apportions state house and senate districts when the Legislature has failed to do so. Art. III, § 16(b), Fla. Const. The institutional expertise this duty presumes makes this Court better suited to draw the congressional maps than the trial court, especially given the urgency of the matter. Thus, while traditional notions of appellate practice and the division of responsibilities between different levels of the judicial branch would perhaps ordinarily contemplate the trial court drawing a map in the first instance for this Court to review, the unique circumstances of the crisis created by the Legislature—hitting foul balls in its first two attempts and now striking out without a swing when given a third opportunity to draw constitutional districts—warrants the remedy requested.

9. Equipped with modern map analysis software and the parties' submissions, this Court will have the necessary tools to quickly and easily analyze compactness, boundaries, demographic information, and performance data without the need for extensive discovery or evidentiary proceedings. Indeed, this Court conducted just such an analysis during its facial review of state legislative plans. *See In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d

597, 610 (Fla. 2012) ("*Apportionment I*") (explaining that "technology has continued to advance in the last decade, allowing this Court to objectively evaluate many of Florida's constitutionally mandated criteria without the necessity of traditional fact-finding").[1]

10. Expanding the relinquishment period until late October 2015 or early November 2015 would also threaten to disrupt the upcoming special session and remedial proceedings in the related action challenging the state Senate plan (the "Senate Action"). The Senate has now admitted that "the apportionment plan adopted by the Florida Legislature on March 27, 2012, to establish Florida's Senate districts" violates Article III, Section 21 "because the Enacted Senate Plan and certain individual districts were drawn to favor a political party and incumbents." (**Ex. 1** at 1.) Accordingly, the trial court in the Senate Action entered a Consent Judgment invalidating the Senate plan and ordering remedial proceedings. (*Id.* at 5-7.) The parties carefully negotiated a schedule that envisioned remedial proceedings in the Senate Action commencing shortly after the relinquishment proceedings in this case to avoid conflict. The Legislature will

[1] Although the parties presented live expert testimony on minority protection issues at trial, any minority protection analysis can be just as easily addressed by submitting expert reports or affidavits, or by considering the relevant objective data without expert assistance. *Id.* at 612 n.13 (noting that this Court declined to strike expert affidavit, but ultimately "did not rely on that affidavit, instead conducting its own independent analysis using objective data").

convene a special session to consider a remedial Senate plan on October 19, 2015, and the case scheduling order then depends upon a remedial plan being in place by November 9, 2015 (**Ex. 2**). Because there is an exceedingly narrow window for appellate review of any remedial Senate plan in time to affect the 2016 elections, any delay occasioned by an expansion of the relinquishment proceedings in this case may well jeopardize an effective remedy in the Senate Action.

11. Because trial court proceedings would be of limited assistance, would further delay adoption of a remedial plan, and might disrupt remedial proceedings in the Senate Action, this Court should terminate its relinquishment of jurisdiction and immediately implement procedures under which this Court will consider and adopt a remedial plan, whether that be by adopting a plan proposed by one of the parties or one drawn or modified by the Court. Coalition Appellants offer the following schedule of proposed procedures and deadlines:

a. The Legislature should be ordered to file, on or before **September 4, 2015**, the 2002, 2012, and 2014 plans in .doj format, the statistical reports for such plans, and the meeting and hearing transcripts for the special session as required by this Court's Order dated July 9, 2015.

b. The parties should be ordered to submit, on or before **September 21, 2015**, proposed remedial plans in .doj format, along with (1) the statistical reports and hard copy maps identified in this Court's Order dated July 9, 2015, (2) briefs in support of the proposed remedial plans, and (3) any other supporting materials for such plans (which may, but need not, include expert affidavits).

c. The parties should be directed that they may, on or before **October 12, 2015**, file briefs in opposition to other parties' remedial plans.

d. Oral argument should be scheduled on an expedited basis.

12. For the reasons stated above, Coalition Appellants believe that further proceedings in the trial court are unnecessary and could delay adoption of a remedial plan when time is of the essence. If, however, this Court elects to continue its relinquishment of jurisdiction to the trial court, any proceedings before the trial court should not be unduly delayed or expanded. Coalition Appellants offer the following schedule of proposed procedures and deadlines to assist this Court in adopting a final remedial plan without extending the relinquishment period beyond its current termination date of October 17, 2015:

a. Discovery should be allowed only for good cause and by order of the trial court. The parties should be allowed to submit expert affidavits in lieu of testimony unless the trial court finds that live expert testimony is required for good cause.

b. The Legislature should be ordered to file, on or before **September 4, 2015**, the 2002, 2012, and 2014 plans in .doj format, the statistical reports for such plans, and the meeting and hearing transcripts for the special session as required by this Court's Order dated July 9, 2015.

c. The parties should be ordered to submit, on or before **September 11, 2015**, proposed remedial plans in .doj format, along with (1) the statistical reports and hard copy maps identified in this Court's Order dated July 9, 2015, (2) memoranda in support of the proposed remedial plans, and (3) any other supporting materials for such plans (which may, but need not, include expert affidavits).

d. The parties should be directed that they may, on or before **September 21, 2015**, file briefs in opposition to other parties' remedial plans.

e. The trial court should be directed to conduct an evidentiary hearing commencing on **September 24, 2015**[2] and enter an order recommending approval of a proposed remedial plan submitted by the parties (either as submitted or as modified) or recommending approval of a court-drawn remedial plan.

f. Upon completion of the trial court proceedings, this Court should enter an order allowing briefing directed to the trial court's recommendation and setting oral argument on an expedited basis.

13. Regardless of whether this Court terminates or modifies its relinquishment of jurisdiction, it should reject the House's invitation to characterize any remedial plan as an "expressly . . . interim or provisional plan that will remain in place only until superseded by subsequent legislation." (House Mot. at 3.) The subtext of this request appears to be a desire on the part of the Legislature to downplay any judicially crafted plan as somehow inferior to or lower in stature than a legislatively adopted plan. Yet "[c]ongressional districts created by a court are equally effective as those created by [a legislative body] and disruption of those districts triggers the same policy concerns." *Salazar*, 79 P.3d at

[2] The trial court has already set aside time on September 24, 25, and 28, 2015, for a remedial hearing. (*See* Sen. Resp., Ex. A at 4.) This proposed schedule would ensure that the hearing proceeds on those days.

1243. Casting the plan as "interim" or "provisional" will needlessly cause confusion as to the stature and effect of this Court's remedial plan.[3]

14. More broadly, a cynic might view the House's request as an attempt to lure this Court into agreeing in advance to legislative efforts to unwind any remedial plan after direct judicial oversight has ceased. At the appropriate stage of these proceedings, this Court can consider and impose measures to ensure that last-minute legislative machinations do not disrupt elections under the remedial plan, such as retaining jurisdiction to promptly address unconstitutional successor plans. There is certainly no legitimate reason to make a prospective ruling on these issues in a preliminary order addressing the relinquishment of jurisdiction.

Respectfully submitted,

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[3] By way of example, future litigants or even courts might misinterpret the "provisional" or "temporary" designation to mean that the remedial map does not serve as the benchmark map with respect to minority protection issues.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to the following attorneys on August 27, 2015:

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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

THE LEAGUE OF WOMEN VOTERS OF FLORIDA; COMMON CAUSE; JOAN ERWIN; ROLAND SANCHEZ-MEDINA, JR.; J. STEELE OLMSTEAD CHARLES PETERS; OLIVER D. FINNIGAN; SERENA CATHERINA BALDACCHINO; AND DUDLEY BATES, PLAINTIFFS, v. KENNETH W. DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; ANDY GARDINER, in his official capacity as President of the Florida State Senate; THE FLORIDA HOUSE OF REPRESENTATIVES; and STEVE CRISAFULLI, in his official capacity as Speaker of the Florida House of Representatives, and PAM BONDI, in her official capacity as Attorney General of the State of Florida, DEFENDANTS.	CASE NO.: 2012-CA-2842

STIPULATION AND CONSENT JUDGMENT

Plaintiffs THE LEAGUE OF WOMEN VOTERS OF FLORIDA, COMMON CAUSE, JOAN ERWIN, ROLAND SANCHEZ-MEDINA, JR., J. STEELE OLMSTEAD, CHARLES PETERS, OLIVER D. FINNIGAN, SERENA CATHERINA BALDACCHINO, and DUDLEY BATES (collectively, "Plaintiffs"); and Defendants, THE FLORIDA SENATE and ANDY GARDINER in his official capacity as President of the Senate (collectively, the "Florida Senate") request entry of a Consent Judgment based the following Stipulation in the form provided below:

STIPULATION

1. In light of the factual findings and legal analysis announced by the Florida Supreme Court in *League of Women Voters of Florida v. Detzner*, __ So. 3d ___, 2015 WL 4130852 (Fla. July 9, 2015) ("*Apportionment VII*"), the Florida Senate stipulates and agrees that the apportionment plan adopted by the Florida Legislature on March 27, 2012, to establish Florida's Senate districts (the "Enacted Senate Plan") violates the provision of Article III, Section 21(a) of the Florida Constitution providing that "[i]n establishing legislative district boundaries . . . [n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent," because the Enacted Senate Plan and certain individual districts were drawn to favor a political party and incumbents.

Exhibit 1

2. Accordingly, the Florida Senate stipulates and agrees that the Enacted Senate Plan shall not be enforced at the 2016 primary and general elections, and stipulates and agrees to entry of the attached Consent Judgment and to conduct remedial proceedings in order to enact a remedial apportionment plan for Florida's Senate districts ("Remedial Senate Plan").

3. The Florida Senate further stipulates and agrees that, in the forthcoming remedial proceedings in this case, the burden shall be shifted to the Legislature to justify its decisions in drawing Senate district boundaries, no deference shall be afforded to the Legislature's decisions in drawing any Senate district boundaries, and the review of the Remedial Senate Plan and individual districts shall be subject to the same standards as set forth in *Apportionment VII*.

4. Plaintiffs and the Florida Senate stipulate and agree that the trial court will retain jurisdiction of this case to perform an oversight role should any disputes arise, to permit further discovery, to review the Remedial Senate Plan to ensure that it complies with the requirements of the Florida Constitution, and to determine entitlement and the amount of attorney's fees and costs that may be awarded to Plaintiffs. The Legislative Parties do not concede that Plaintiffs are entitled to recover their attorney's fees in this action. The Florida House of Representatives and the Florida Senate have agreed among themselves that the Florida Senate agrees that it shall be exclusively liable for any attorney's fees and costs awarded in this action or any appeal from this action.

5. Accordingly, Plaintiffs and the Florida Senate stipulate and agree to the Court's entry of the following Consent Judgment.

STIPULATED AND AGREED:

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CONSENT JUDGMENT

THIS MATTER, having come before the Court on the Stipulation of Plaintiffs and the Florida Senate, and the Court, having examined the pleadings and submissions of the parties and otherwise being fully advised in the premises, now, therefore,

ORDERS AND ADJUDGES:

a. The apportionment plan adopted by the Florida Legislature on March 27, 2012, to establish Florida's Senate districts (the "Enacted Senate Plan") violates Article III, §21(a) of the Florida Constitution providing that "[i]n establishing legislative district boundaries . . . [n]o apportionment plan or district shall be drawn with the intent to favor or disfavor a political party or an incumbent," and the Enacted Senate Plan shall not be enforced or utilized for the 2016 primary and general elections.

b. The Legislative Parties shall file with the Court and serve on Plaintiffs a remedial apportionment plan for Florida's Senate districts (the "Remedial Senate Plan") no later than November 9, 2015, along with the following information:

    1. The Remedial Senate Plan, the Enacted Senate Plan and the 2002 benchmark Senate Plan in .doj format, which is compatible with District Builder, MyDistrictBuilder, and Maptitude for Redistricting software.

    2. The name of the software used to create the Remedial Senate Plan, the data and criteria used in drafting the Remedial Senate Plan, the source of the data used in drafting the Remedial Senate Plan, and any other relevant information.

    3. Statistical reports for the Remedial Senate Plan, the Enacted Senate Plan and the 2002 benchmark Senate Plan in both searchable .pdf and .xls formats. These reports shall include, at a minimum, the following from the applicable census data: the population numbers in each district, the total voting age population (VAP) in each district, and the VAP of each racial and ethnic group in each district. Reports with additional information and statistics, such as compactness measurements, and reports for prior redistricting plans, may also be submitted in searchable .pdf and .xls formats.

    4. Any transcripts from legislative hearings, including committee meetings, and any transcripts or recordings of any non-public meetings (to the extent any such transcripts or recordings exist) regarding the passage of the Remedial Senate Plan.

    5. Any available hard-copy maps of the Remedial Senate Plan, which shall include depictions of the entire state as well as regional maps. Each hard-copy map shall also be filed in electronic .pdf format.

6. The Legislative Parties reserve the right to seek relief from this Judgment should unanticipated contingencies arise during the legislative process which prevent the Legislature from enacting the Remedial Senate Plan by November 9, 2015, and Plaintiffs reserve their right to contest any such relief. The Court and the parties appreciate the time-sensitive nature of these proceedings and the need to provide certainty to candidates and voters regarding the legality of the State's Senate districts and agree that it is essential that a constitutionally compliant remedial senate plan be in place for the 2016 primary and general elections.

c. The Legislative Parties shall upon written request promptly provide Plaintiffs a copy of all non-privileged emails and documents related to the drawing of the Remedial Senate Plan.

d. This Court retains jurisdiction to review the Remedial Senate Plan to ensure that it complies with the requirements of Article III, Section 21 of the Florida Constitution. In the remedial proceedings, the burden shall be shifted to Defendants to justify the Legislature's decisions in drawing Senate district boundaries, no deference shall be afforded to the Legislature's decisions (whether advanced by the whole or either chamber of the Legislature) regarding the drawing of Senate districts, and the review of the Remedial Senate Map and individual districts shall be subject to the same standards as set forth in *Apportionment VII.*

e. The parties shall be permitted to conduct discovery in the remedial proceedings. Plaintiffs shall be permitted to submit objections to the Remedial Senate Plan and to submit proposed alternative remedial Senate plans for the court's consideration. Plaintiffs shall submit alternative plans in .doj and .pdf format and in hard-copy format, along with reports in searchable .pdf and .xls formats that include, at a minimum, the following from the applicable census data: the population numbers in each district, the total voting age population (VAP) in each district, and the VAP of each racial and ethnic group in each district. Reports with additional information and statistics, such as compactness measurements, and reports for prior redistricting plans, may also be submitted in searchable .pdf and .xls formats.

f. The court reserves jurisdiction to consider any pending or post-judgment motions, including any motion for an award of attorney's fees and costs to Plaintiffs, and to enter such further orders as may be necessary to effectuate this judgment or to otherwise fashion an appropriate equitable remedy. Defendants do not concede that Plaintiffs are entitled to recover attorney's fees.

g. This Consent Judgment supersedes the Case Management and Scheduling Order entered on April 8, 2015. The trial and the pretrial conferences scheduled in the Case Management and Scheduling Order, and all deadlines established in the Case Management and Scheduling Order, are canceled. As soon as practicable, the parties

shall attend a case management conference to set out a schedule for the remedial proceedings and shall strictly comply with the schedule the court sets for the remedial proceedings.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida, this 28 day of July, 2015.

GEORGE S. REYNOLDS, III
Circuit Judge

Copies to: All Counsel of Record

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

THE LEAGUE OF WOMEN VOTERS
OF FLORIDA, *et al.*,

Plaintiffs,

vs.

Case No. 2012-CA-002842

KENNETH W. DETZNER, *et al.*,

Defendants.
_____/

AGREED SCHEDULING ORDER

On July 28, 2015, this Court entered a Consent Judgment which directs the Legislative Parties to file with the Court and serve on Plaintiffs a remedial apportionment plan for Florida's Senate districts (the "Remedial Senate Plan") no later than November 9, 2015. On July 29, 2015, this Court entered an Order Setting Case Management Conference that directed the parties to confer and, if possible, submit to the Court an agreed scheduling order for the remedial proceedings. The parties having conferred and submitted an agreed scheduling order, and the Court, having reviewed and approved the parties' proposal, enters this Order.

1. The Legislative Parties anticipate that the Legislature will enact the Remedial Senate Plan by November 9, 2015. The Legislative Parties reserve the right to seek relief from this Agreed Scheduling Order should unanticipated contingencies arise during the legislative process which prevent the Legislature from enacting the Remedial Senate Plan by November 9, 2015, and Plaintiffs reserve their right to contest any such relief.

2. Within **one business day** after enactment of the Remedial Senate Plan, the Legislative Parties shall make all submissions required of them by paragraph b. of the Consent Judgment.

3. Within **fourteen (14) days** after enactment of the Remedial Senate Plan, Plaintiffs shall:

a. File and serve their response to the Remedial Senate Plan, which, at a minimum, and subject to ongoing discovery, shall identify (i) any districts in the Remedial Senate Plan that Plaintiffs challenge; (ii) each constitutional standard that each challenged district allegedly violates; and (iii) the factual bases of each alleged violation;

b. File and serve any alternative maps that Plaintiffs wish to introduce in support of their claims in this proceeding in the manner set forth in the Consent Judgment (or, if Plaintiffs have already filed and served in this action the alternative maps that they wish to introduce, Plaintiffs shall identify the specific alternative maps they intend to introduce in support of their claims);

c. Serve any expert disclosures, which shall include the identities and qualifications of all experts on whose opinions Plaintiffs intend to rely, as well as a complete statement of their opinions and the production of all materials on which the experts relied in forming their opinions; and

d. Subject to ongoing discovery, serve a list of all fact witnesses, including known impeachment and rebuttal witnesses whom Plaintiffs might call at the evidentiary hearing, and of all exhibits that Plaintiffs might offer to introduce. The witness list shall contain the name, address, and telephone number of each witness and

segregate all witnesses into three groups: (a) witnesses whom the party in good faith intends to call; (b) witnesses whom the party might or might not call, depending upon what witnesses the opposing parties call or other unanticipated matters; and (c) witnesses whom the party does not intend to call, but who are listed from an abundance of caution in light of their knowledge of the facts or the issues in dispute.

4. Within **fourteen (14) days** after Plaintiffs make all disclosures required by Paragraph 3 of this Order, the Legislative Parties shall:

a. File and serve their reply to Plaintiffs' response to the Remedial Senate Plan, which, at a minimum, and subject to ongoing discovery, shall reply to each challenge identified in Plaintiffs' response;

b. Serve any expert disclosures, which shall include the identities and qualifications of all experts on whose opinions the Legislative Parties intend to rely, as well as a complete statement of their opinions and the production of all materials on which the experts relied in forming their opinions; and

c. Subject to ongoing discovery, serve a list of all fact witnesses, including known impeachment and rebuttal witnesses whom the Legislative Parties might call at the evidentiary hearing, and of all exhibits that the Legislative Parties might offer to introduce. The witness list shall contain the name, address, and telephone number of each witness and segregate all witnesses into three groups: (a) witnesses whom the party in good faith intends to call; (b) witnesses whom the party might or might not call, depending upon what witnesses the opposing parties call or other unanticipated matters; and (c) witnesses whom the party does

not intend to call, but who are listed from an abundance of caution in light of their knowledge of the facts or the issues in dispute.

5. To the extent that a party identifies any witnesses or exhibits after service of the parties' witness and exhibit disclosures as set forth above, the witnesses or exhibits so identified shall be disclosed immediately (but no later than **noon on December 10, 2015**) in a supplemental witness and exhibit disclosure that conforms to the requirements of Paragraphs 3 and 4 above.

6. Discovery shall conclude by **December 11, 2015**. The Court anticipates that the parties will serve and respond to requests for discovery in good faith and as promptly as circumstances permit. The parties may take discovery after the discovery deadline only by leave of court granted upon a showing of good cause or by the agreement of all parties.

7. Any Defendant other than the Legislative Parties that wishes to present argument or evidence at the evidentiary hearing referenced in Paragraph 8 below shall comply with the disclosure requirements set forth in Paragraphs 4 and 5 above.

8. The parties may file a motion seeking an extension from the Court of the deadlines set forth in this Scheduling Order, but such extension will be granted only for good cause shown.

9. The Court will conduct an initial pretrial conference on December 1, 2015, beginning at 1:00 p.m. The Court will conduct a second pretrial conference, if necessary, on December 10, 2015 beginning at 1:00 p.m.

10. The evidentiary hearing shall begin at 9:30 a.m. on **December 14, 2015**, in Courtroom TBD. The hearing shall continue from day to day as necessary, but conclude no later than **December 18, 2015**.

11. It is the understanding of the Court that in the event Plaintiffs are successful in any challenge presented at the evidentiary hearing, the Court will set out its factual and legal bases for such a ruling and refer the matter back to the Legislature to redraw the map.

12. Any party may move for reconsideration of any part of this order for good cause shown.

DONE AND ORDERED this 19 day of August, 2015.

George S. Reynolds, III
Circuit Judge

Copies to all counsel of record