

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA**

DR. DOROTHY NAIRNE, REV. CLEE
EARNEST LOWE, DR. ALICE
WASHINGTON, STEVEN HARRIS, BLACK
VOTERS MATTER CAPACITY BUILDING
INSTITUTE, and THE LOUISIANA STATE
CONFERENCE OF THE NAACP,

Plaintiffs,

v.

NANCY LANDRY, in her official capacity as
Secretary of State of Louisiana,

Defendant.

Civil Action No. 3:22-cv-00178
SDD-SDJ

PLAINTIFFS' RENEWED MOTION FOR SCHEDULING CONFERENCE

Pursuant to Local Civil Rule 7 and the Court's February 8, 2024 Order, Plaintiffs—Dr. Dorothy Nairne, Rev. Clee Earnest Lowe, Dr. Alice Washington, Steven Harris, Black Voters Matter Capacity Building Institute, and Louisiana State Conference of the NAACP—respectfully renew their motion for a scheduling conference. Plaintiffs' memorandum in support of this motion is attached.

Date: March 5, 2024

 Respectfully submitted,

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**Practice is limited to federal court.*

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Plaintiffs—Dr. Dorothy Nairne, Rev. Clee Earnest Lowe, Dr. Alice Washington, Steven Harris, Black Voters Matter Capacity Building Institute, and Louisiana State Conference of the NAACP—respectfully renew their motion for a scheduling conference.

On February 8, 2024, the Court permanently enjoined elections under S.B. 1 and H.B. 14 for violating Section 2 of the Voting Rights Act. ECF No. 233. The Court ordered that the state shall have “a reasonable period of time” to “address the Court’s findings and implement State House and Senate election maps that that comply with § 2 of the Voting Rights Act,” and specified that the Court would determine the “period of time” that the State would be afforded “following submittals by the parties.” ECF No. 233 at 91.

Plaintiffs have filed two motions related to determining the appropriate period of time for the state to draw new maps: a motion for special elections on the remedial state legislative maps

in November 2024, and a motion to grant Plaintiffs’ proposed scheduling order for the remedial phase of this case.

Both motions emphasize that it is vital to Plaintiffs’ fundamental right to vote that this case move forward to the remedial stage as quickly as possible. And it is still possible to set a remedial schedule that would permit special elections in November 2024. *See* Exhibit A (proposed order granting alternative remedial schedule). Plaintiffs maintain that it would be prudent for the parties and the Court to discuss the appropriate schedule for the remedial phase of this case at the Court’s earliest convenience.

Contrary to Defendants’ representations,¹ this Court has jurisdiction to proceed to the remedial phase of this case while the appeal is pending. *See* Fed. R. Civ. P. 62(d) (“While an appeal is pending from an interlocutory order or final judgment that grants . . . an injunction, the [district] court may suspend, modify, restore, or grant an injunction . . . on other terms that secure the opposing party’s rights.”). Because the only part of this Court’s order that is arguably ripe for appeal is its interim injunction against the enacted maps, proceeding to the remedial phase would have no impact on the order that is the subject of the pending appeal. After a notice of appeal is

¹ Defendants have argued that their notice of appeal divested the district court of jurisdiction to consider Plaintiffs’ motion for a special election. ECF No. 244 at 4–6. Defendants have invoked cases that stand for the unrelated principle that, once a notice of appeal is filed, the trial court no longer has the authority to revisit the merits of its ruling or to enlarge the scope of any injunctive relief it ordered. *Id.* (citing *McClatchy Newspapers v. Cent. Valley Typographical Union*, 686 F.2d 731, 734 (9th Cir. 1982); *Zimmer v. McKeithen*, 467 F.2d 1381 (5th Cir. 1972)). None of the cases Defendants cite stand for the proposition that a district court lacks jurisdiction to engage in *remedial proceedings* pursuant to its own order while an appeal from the *merits* order is pending. Neither Plaintiffs’ request for special elections nor the anticipated proceedings leading to adoption of new VRA-compliant House and Senate maps is involved in the current appeal or seeks to revisit or enlarge the scope of this Court’s order. Consideration of those issues does nothing to disrupt or alter the Court’s merits ruling or the order enjoining use of Louisiana’s current House and Senate maps in any way. Plaintiffs’ request for special elections as part of the remedial phase of this case—which has not yet begun—thus cannot and does not seek to enlarge or alter any order that is currently on appeal.

filed, a district court still retains jurisdiction to manage its injunctive orders and may issue further orders to enforce the Ruling and Order’s determination that Plaintiffs are entitled to further relief. *See Alberti v. Klevenhagen*, 46 F.3d 1347, 1358–59 (5th Cir. 1995); *Plaquemines Par. Comm’n Council v. United States*, 416 F.2d 952, 954 (5th Cir. 1969); *see also, e.g., Robinson v. Ardoin*, 37 F.4th 208, 216 (5th Cir. 2022) (describing how district court proceeded to remedial phase of preliminary injunction proceedings while appeal of its preliminary injunction was pending before the Fifth Circuit); *Farmhand, Inc. v. Anel Eng’g Indus.*, 693 F.2d 1140, 1145 (5th Cir. 1982) (“a district court maintains jurisdiction as to matters not involved in the appeal”).

If this Court were nevertheless to conclude that it lacks jurisdiction to issue any remedial order, Plaintiffs would request that the Court provide an indicative ruling on their motion for special elections and on further remedial relief as may be necessary pursuant to Federal Rule of Civil Procedure 62.1. *See* 16A Fed. Prac. & Proc. Juris. § 3958.10 (Wright & Miller, 5th ed. 2020). Rule 62.1 would permit this Court to issue an indicative ruling on whether special elections are warranted and would ensure that—if this Court indicates special elections are warranted, and if the Fifth Circuit affirms this Court’s injunction—a special election *could* still be held this fall. An indicative ruling could also provide a basis for the Fifth Circuit to remand the case to this Court to enter a remedial ruling, allowing the Fifth Circuit to consider appeals on liability and remedy together. *See* Fed. R. App. P. 12.1. Accordingly, if the Court believes it presently lacks remedial jurisdiction, Plaintiffs believe a status conference would be beneficial to allow the Court to set a schedule for remedial proceedings leading to an indicative ruling.

Plaintiffs respectfully request that the Court set a status conference to take place this week or on the earliest possible date so that the parties and the Court can discuss next steps in this case.

Date: March 5, 2024

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[PROPOSED] SCHEDULING ORDER

Having sought submissions from the parties for scheduling proposals in its February 8, 2024 Order, ECF No. 233, the Court **HEREBY ORDERS** as follows:

In *In re Landry*, 83 F.4th 300 (5th Cir. 2023), the Fifth Circuit mandamus panel pointed to Alabama’s process following the Supreme Court’s issuance of *Merrill v. Milligan* as an example of “an adequate opportunity to accomplish a redistricting compliant with final judgment,” highlighting that the court afforded the legislature six weeks from the Supreme Court’s remand. *Id.* at 306 (“the Alabama court on remand from the Supreme Court afforded the state an adequate opportunity to accomplish a redistricting compliant with final judgment”). That six-week period was measured from the date of the Supreme Court’s order remanding the case, not the date of the three-judge panel’s scheduling order. And the six-week period was not measured by number of *legislative session* weeks—the *total* number of weeks from the date the decision was issued was six, whereas the Legislature had only one week of session time. *See Singleton v. Allen*, No. 2:21-

CV-1291-AMM, 2023 WL 5691156, at *2 (N.D. Ala. Sept. 5, 2023); Governor of Alabama, *Proclamation* (June 27, 2023), <https://perma.cc/D4F9-78VJ>.

The Court hereby enters the following schedule, which provides the Legislature with more than six weeks from the date of this Court's merits decision (issued on February 8, 2024) to pass new state legislative maps:

- a. March 11, 2024: Deadline for Plaintiffs to serve proposed remedial maps on Defendants
- b. March 19, 2024: Deadline for Plaintiffs' submission on proposed remedial maps (including supporting expert reports)
- c. March 25, 2024: Deadline for Legislature to enact state House and Senate maps that are compliant with the Court's February 8, 2024 Order
- d. March 27, 2024: Deadline for Plaintiffs to notify Court whether they oppose the new enacted maps, if any
- e. March 29, 2024: Deadline for Defendants' opposition to Plaintiffs' maps (including rebuttal reports), and Defendants' submission on proposed remedial maps (including any supporting expert reports)
- f. April 4, 2024: Deadline for Plaintiffs' opposition to Defendants' maps (including rebuttal reports)
- g. April 10, 2024: Remedial hearing

Signed in Baton Rouge, Louisiana, this ____ day of _____, 2024.

Chief Judge Shelly D. Dick