UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

THE SOUTH CAROLINA STATE CONFERENCE OF THE NAACP, and

TAIWAN SCOTT, on behalf of himself and all other similarly situated persons,

Plaintiffs,

v.

THOMAS C. ALEXANDER, in his official capacity as President of the Senate; LUKE A. RANKIN, in his official capacity as Chairman of the Senate Judiciary Committee; JAMES H. LUCAS, in his official capacity as Speaker of the House of Representatives; CHRIS MURPHY, in his official capacity as Chairman of the House of Representatives Judiciary Committee; WALLACE H. JORDAN, in his official capacity as Chairman of the House of Representatives Elections Law Subcommittee; HOWARD KNAPP, in his official capacity as interim Executive Director of the South Carolina State Election Commission; JOHN WELLS, Chair, JOANNE DAY, CLIFFORD J. EDLER, LINDA MCCALL, and SCOTT MOSELEY, in their official capacities as members of the South Carolina Election Commission,

Defendants.

Case No. 3:21-cv-03302-MGL-TJH-RMG

THREE-JUDGE PANEL

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR A PARTIAL STAY OF THE COURT'S JANUARY 6, 2023 ORDER FOR THE 2024 ELECTION CYCLE

INTRODUCTION

Following trial, this Court unanimously concluded that Defendants racially gerrymandered Congressional District 1 ("CD 1") and designed it with a racially discriminatory purpose. Because of the harm to all voters in CD 1 flowing from these violations, this Court issued a permanent injunction, barring future elections from taking place in CD1 under the enacted unconstitutional map. Three weeks after this Court's injunctive order, Defendants moved to stay the decision, pending their appeal to the U.S. Supreme Court, which this Court promptly denied. Defendants neither appealed the denial of the stay nor, most importantly, have taken any steps to meet the burden now shifted to them to rectify the unconstitutional harms. Yet more than a year later, as the parties await a decision from the Supreme Court, Defendants now ask this Court to issue a partial stay of its decision so that the unconstitutional congressional map can remain in place for upcoming elections this year. If permitted, which Plaintiffs urge it should not, it would be the second electoral cycle under the constitutionally infirm map.

Issuing a stay is an extraordinary relief that requires the requesting party to overcome a significant burden. Like Defendants' first stay request, their new one comes nowhere close to meeting—much less carrying—their burden. On the merits, Defendants repeat the same arguments—though in less detail—that this Court committed factual and legal errors in its January 6, 2023 decision. But this Court has already considered and rejected those arguments in its February 4, 2023 Order. Defendants offer no reason for this Court to revisit its permanent injunction, given the extensive trial record and its detailed factual findings and application of law. On the equities, Defendants' claims that implementing a remedial map for the 2024 election cycle will lead to election-administrability issues and confusion for voters and election officials are hypothetical, unsupported, and overblown by the record. So too is Defendants' attempt to invoke

the *Purcell* principle to support a stay. Any *Purcell* concerns are premature. Instead, Defendants proffer a false dichotomy for this Court: namely, Defendants contend that this Court must either attempt to reduce potential voter confusion and election-administration issues by allowing elections to go forward under a constitutionally deficient map or protect the rights of all voters in CD 1 by ensuring there is no election under a map that is racially discriminatory. But this Court need not consider this false choice because Defendants have presented no evidence supporting that a remedial map cannot be feasibly adopted and implemented if the U.S. Supreme Court affirms this Court's January 6, 2023 decision in short order.

What will happen if Defendants' stay request is granted, however, is that voters in South Carolina will be forced to vote in a district that violates the U.S. Constitution, just as they did for the 2022 midterm elections. This Court should reaffirm its commitment to disallow these constitutional injuries to persist—indeed, it rightly has already. Defendants' motion for a partial stay should be denied. Furthermore, as Plaintiffs' notice of intent to file this response reflects, ECF 520 at 2, they respectfully request a status conference as early as this Wednesday, March 13 or soon thereafter, to discuss any steps that can be taken at this juncture to ensure that any remedial process occur as expeditiously as possible following a decision by the U.S. Supreme Court.

BACKGROUND

This Court is well-versed in the factual and procedural background of the case. *See*, *e.g.*, Jan. 6, 2023 Op., ECF 493 ("Op"). Plaintiffs therefore only briefly recount some of the relevant facts.

After an eight-day trial, during which it heard from two dozen witnesses, including six experts, and considered hundreds of exhibits, this Court unanimously ruled that Defendants' design of CD 1 is a racial gerrymander and intentionally discriminates against Black voters in

Charleston County. Op. at 29-30. This Court enjoined further elections in CD 1 until the adoption of a legally compliant remedial map, and it gave the legislature the first opportunity to submit such a plan. *Id.* at 30-31. Rather than act promptly to rectify Plaintiffs' constitutional rights, Defendants tried to stay the Court's decision while they appealed to the Supreme Court. *See* ECF No. 495. On February 4, 2023, the Court denied Defendants' original stay motion. *See* ECF 501 ("February 4 Order"). The Court also altered the date for the legislature to submit a remedial plan to 30 days after a final Supreme Court decision. *Id.* at 6.

In the February 4 Order, this Court found that Defendants had not shown a strong likelihood of success on the merits, "argu[ed] against precedent rather than relying upon existing Supreme Court authority," *id.* at 4, and did not address—much less establish—irreparable injury they might suffer from the injunction, *id.* at 5. On the other hand, the Court invoked "the well-established principle that where fundamental voting rights have been violated, plaintiffs suffer irreparable injury *until the constitutional deprivation has been removed.*" *Id.* at 5-6 (emphasis added). Defendants did not appeal or seek any further relief until the current motion.

The parties moved expeditiously to brief the appeal, asking the Supreme Court to resolve it by January 1, 2024. *See, e.g.*, Juris. Stat. at 5, *Alexander v. S.C. State Conf. of the NAACP*, No. 22-807 (U.S. Feb. 17, 2023); Parties Joint Letter Re: Argument and Briefing Schedule, *Alexander*, No. 22-807 (U.S. May 25, 2023). And early in the Supreme Court's fall 2023 term, on October 11, 2023, that Court heard oral argument on Defendants' appeal. But the Supreme Court has yet to issue its decision. As Defendants acknowledge, *see* Defs.' Mot. for Partial Stay of Jan. 6, 2023 Order, ECF 519 ("Mot.") at 3-4, this Court accounted for the possibility that the appeal process would take time and the chance that a remedial plan would not be adopted before the 2024 primary and general elections. *See* Feb. 4 Order at 5. This Court clearly ordered that, in those

circumstances, "the election for Congressional District No. 1 should not be conducted until a remedial plan is in place." *Id*.; *see also* Mot. at 3-4.

As the Executive Director of the South Carolina State Election Commission ("SEC") explains in the declaration submitted with Defendants' motion, key election dates are still far off. See Howard Knapp Aff., ECF 519-1 ("Knapp Aff."). While prospective candidates have until April 1, 2024, to file the necessary paperwork to run in the CD 1 primary, *id*. at ¶ 3, that primary is not scheduled to occur until June 11, 2024. *Id.* at ¶ 9. Remaining operative dates do not occur for more than a month. *See Id*. at ¶¶ 9 (UOCAVA absentee ballots must be sent by April 27, 2024) & 10 (election database not due until April 25, 2024).

Moreover, the legislature will remain in regular session for almost two more months, until May 9 2024, *see* S.C. Code Laws § 2-1-180. Even then, the session can be extended to consider matters of importance, by passing a so-called *sine die* resolution, *Id*. § 2-1-180(c). The Governor can also extend legislative sessions, *see* S.C. Const. Art. IV, § 19. And sessions are routinely extended. In fact, from 2002 to 2022, the Legislature passed a *sine die* resolution every single year to consider specific matters of importance, including, in 2021, redistricting.[1] When, in 2023, the Legislature did not extend the session of its own accord for the first time in 20 years, Governor McMaster extended it to consider budgetary matters.[2]

[1] H. 4285, 124th Gen. Assemb. Sess. (S.C. 2021), https://www.scstatehouse.gov/sess124_2021-2022/bills/4285.htm#:~:text=The%20Sine%20Die%20adjournment%20date%20for%20the,the%20General%20Assembly%20to%20continue%20in%20session.

[2] *See* S.C. Off. Governor, *Gov. Henry McMaster Calls General Assembly Back for Extra Session,* (May 12, 2023), https://governor.sc.gov/news/2023-05/gov-henry-mcmaster-calls-general-assembly-back-extra-session.

Meanwhile, the Supreme Court can rule in March 2024 or soon after, as it may again issue decisions on Friday, March 15 or thereafter on March 18 when it next holds oral arguments.[3] The State Election Commission has not represented that it cannot meet the existing deadlines if a decision is issued soon. *See generally* Knapp Aff.

Nor are Defendants compelled to operate from scratch in proposing a remedial map. In fact, the General Assembly is currently in possession of maps that may pass constitutional muster. *See*, *e.g.*, Pls.' Post-Trial Proposed Amended Findings of Fact & Conclusions of Law, ECF 499 ("Pls' FoF/CoL") ¶¶ 83-119, 129-32, 670. For example, during the 2021-2022 legislative session, the House Defendants developed and published a map in which the Black voting-age population ("BVAP") of CD 1 is 20.27% and does not have the infirm hallmarks of the enacted congressional map. *Id.* ¶¶ 478-81, 85-87.

ARGUMENT

Defendants' renewed stay request should be denied because Defendants offer no compelling reason for reconsidering this Court's February 4 Order, and they still fail to make a showing on the relevant factors to support a stay. Defendants are unlikely to win on the merits, fail to demonstrate that they will suffer irreparable harm absent a stay, and the balance of interests do not support a stay. Defendants' argument that a stay is warranted under *Purcell* also should be rejected because it is premature and lacks supporting evidence at this stage.

A stay pending appeal is "extraordinary relief" and requires the movant to meet a "heavy burden." *Winston-Salem/Forsyth Cnty. Bd. of Educ. v. Scott*, 404 U.S. 1221, 1231 (1971) (Burger, C.J., in chambers). "[T]he applicant must … show[] not only that the judgment of the lower court

[3] *See* United States Supreme Court Calendar https://www.supremecourt.gov/oral_arguments/2023TermCourtCalendar.pdf (last visited March 12, 2024).

was erroneous on the merits, but also that the applicant will suffer irreparable injury if the judgment is not stayed pending his appeal." *Williams v. Zbaraz*, 442 U.S. 1309, 1311 (1979) (quoting *Whalen v. Roe*, 423 U.S. 1313, 1316 (1975) (Marshall, J., in chambers)).

Courts regularly receive requests to stay court orders enjoining the use of redistricting plans, but rarely grant them. *See*, *e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, No. 3:14-CV-852, 2018 WL 11393922 (E.D. Va. Aug. 30, 2018), stay denied *sub nom. Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 914 (2019); *Harris v. McCrory*, No. 1:13CV949, 2016 WL 6920368 (M.D.N.C. Feb. 9, 2016), stay denied, 577 U.S. 1129 (2016); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552 (E.D. Va. 2016), stay denied *sub. nom. Wittman v. Personhuballah*, 577 U.S. 1125 (2016); *see also Perez v. Texas*, 891 F. Supp. 2d 808 (W.D. Tex. 2012), stay denied *sub. nom. LULAC v. Perry*, 567 U.S. 966 (2012).

To determine whether to grant a stay pending appeal, the Court considers: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The first two factors "are the most critical." *Id.*

Here, Defendants cannot justify "an intrusion into the ordinary processes of administration and judicial review." *Kentucky v. Biden*, 23 F.4th 585, 593 (6th Cir. 2022) (quotations omitted).

First, Defendants have scant likelihood of upending this Court's well-reasoned, highly fact-dependent determination, which faithfully applied existing precedent. *See*, *e.g.*, Appellees' Br. at 29-30, *Alexander*, No. 22-807 (U.S. August 11, 2023). Defendants do not even make a strong case for this prong, offering just one-sentence to attempt to address it and repeating arguments this

Court has already considered and rejected. Mot. at 11. Their motion should be denied for this reason alone.

Second, Defendants will not be irreparably harmed absent a stay because there is no evidence that a constitutionally compliant map cannot be developed and implemented if the Supreme Court issues a decision in the next month. Moreover, Defendants are responsible for any putative harm because they have taken no steps towards proposing a remedial plan even though the burden now is on them to do so and this Court invited them to do so more than a year ago.

Third, as this Court has already held, Plaintiffs suffer "serious ongoing constitutional injury," due to Defendants' decision to use unlawful racial targeting during redistricting. Op. at 31. *Finally*, the public interest favors an expeditious remedy to the constitutional violations, such that this next congressional election must occur using district lines that do not discriminate against Black voters.

I. Defendants Still Fail to Establish a Likelihood of Success on the Merits.

This Court has already considered and rejected Defendants' claims that it committed any factual and legal errors in reaching its post-trial decision. February 4 Order at 3-4. Defendants' motion recycles those same claims without addressing—let alone refuting—the Court's conclusions to the contrary. *See generally* Mot. That is because this Court's January 6 Opinion is built on a series of sound factual findings—including credibility determinations—that are amply supported by the record, February 4 Order at 3-4, and subject to highly deferential clear-error review on appeal, *see, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 293 (2017). As Plaintiffs have argued, Defendants cannot overcome the vast deference given to the Court's factual findings on appeal. *See* Appellees' Mot. to Affirm at 20-29, *Alexander*, No. 22-807 (U.S. March 29, 2023) ("Mot. to Affirm"); Appellees' Br. at 42-53, *Alexander*, No. 22-807 (U.S. August 11, 2023) ("Appellees' Br."); *see generally* Oral Arg. Tr., *Alexander*, No. 22-807 (U.S. Oct. 11, 2023) ("Oral Arg. Tr.").

As this panel found previously, the claimed legal errors also are meritless because this Court straightforwardly applied relevant and governing precedent. *See* Mot. to Affirm at 30-34; Appellees' Br. at 53-62; *see generally* Oral Arg. Tr..; February 4 Order at 3-4. Defendants have therefore not made any showing—let alone a strong one—that they will prevail on their appeal based on the Court's February 4 order and the reasons described in Plaintiffs' briefs and oral argument at the Supreme Court. The Court should deny their motion for this reason alone.

II. Neither *Purcell* Nor the Balance of Equities Justifies A Partial Stay.

A. The *Purcell* principle does not require a partial stay.

Defendants' motion is premature and lacks evidence to support invoking *Purcell*. To begin, Defendants' claim that the General Assembly *needs* "at least 30 days to enact a remedial plan in the first instance" rings hollow. Mot. at 6. They hypothesize, without citation or support, that "any remedial proceedings" in the case "would take significant time." *See id.* But courts routinely give legislatures significantly less time to enact lawful remedial plans, including in cases where more districts need to be redrawn than are at issue here. *See*, *e.g.*, *Singleton v. Merrill*, 582 F. Supp. 3d 924, 936–37 (N.D. Ala. 2022), *order clarified*, Nos. 2:21-CV-1291-AMM, 2:21-cv-1530-AMM, 2022 WL 272637 (N.D. Ala. Jan. 26, 2022), and *aff'd sub nom. Allen v. Milligan*, 599 U.S. 1 (2023) (three-judge court) (14 days); *League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Nos. 2021-1193, 2021-1198, 2021-1210, 2022 WL 110261, at *28 (Ohio Jan. 12, 2022) (10 days); *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (14 days); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1356-57 (N.D. Ga. 2004) (per curiam) (three-judge court) (19 days).

The evidentiary record and ease in which a remedial plan can be developed cast even further doubt on Defendants' allegation that 30 or more days are needed for any remedial process.[4] The General Assembly need not craft a remedial plan from scratch. In fact, it has the benefit of the many maps and draft maps produced during the redistricting cycle, including one publicly proposed by House Defendants with a CD 1 BVAP of 20.27% that does not reflect the Enacted Plan's gerrymander. *See*, *e.g.*, Pls' FoF/CoL ¶¶ 83-119, 129-32, 670. And if the General Assembly declines to adopt any of those maps wholesale, it can at least use one or more of them as a baseline to draw a proposed remedial map, which, depending on the circumstances, could be limited to changes between CDs 1 and 6 and a limited number of counties within them rather than a full redraw of the map.

Moreover, Defendants have the resources and technology needed to quickly draft constitutionally compliant maps, including access to their own experienced mapdrawers, as well as this Court's technical advisor, the South Carolina Revenue and Fiscal Affairs Office. For all these reasons, Defendants have not shown that a "constitutionally compliant map" for CD 1 cannot be designed "without undue difficulty." February 4 Order at 4 n.2 (citing January 6 Opinion at 30). And this Court retains its jurisdiction to change the remedial schedule to shorten the timeframe for considering and adopting a remedial plan that would not risk moving certain upcoming deadlines and would allow for the June 11 primary to remain in place. February 4 Order at 3 n.1.

[4] Of course, if the South Carolina legislature abdicates its responsibility to promptly cure the violations with a constitutional and legally valid remedy, or if it is not practical for that legislative body to act because of an imminent election, this Court may have to take on "the unwelcome obligation" to fashion a remedy. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (quoting *Connor v. Finch*, 431 U.S. 407, 415 (1977)).

Moreover, the failure to enact a constitutionally compliant congressional map is a problem of the Legislative Defendants own making, and they need not continue to wait for any direction on a remedial process. The burden to cure a constitutional harm rests with the violating entity. *See N. Carolina State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 240 (4th Cir. 2016) (citing *United States v. Virgina*, 518 U.S. 515, 547 (1996); *see also Green v. New Kent Cnty. Sch. Bd.*, 391 U.S. 430, 439 (1968) ("The burden on [the entity violating the constitution] today is to come forward with a [remedial] plan that promises realistically to work, and promises realistically to work now."). Accordingly, the General Assembly can start creating a contingent remedial map while it is in session now. Indeed, House Defendants quickly developed remedial maps during the 2022 legislative session to resolve Plaintiffs' claims challenging certain state House legislative districts as being racially discriminatory. *See* ECF 266 and 266-1. As discussed above, the General Assembly has the benefit of several maps in the evidentiary record and access to several mapdrawing resources. Developing a contingency plan can avoid any potential inconveniences for election administrators and reduce any discussion about moving key relevant deadlines even if the Supreme Court affirms the January 6 Opinion during its sitting later this month or soon thereafter.

Notably, other states have responded to court rulings by enacting contingent remedial plans pending the resolution of their appeals. In Georgia, for instance, Governor Brian Kemp called a special session of the General Assembly beginning November 29, 2023, and the legislature enacted remedial plans for the state senate and house, which were signed into law on December 8, 2023.[5]

[5] *See* Georgia General Assembly, SB1EX: Georgia Senate Redistricting Act of 2023, at https://www.legis.ga.gov/legislation/65851; Georgia General Assembly, HB1EX: Georgia House of Representatives Redistricting Act of 2023, at https://www.legis.ga.gov/legislation/65850; Order, *Alpha Phi Alpha Fraternity v. Raffensperger*, No. 1:21-CV-05337-SCJ, 2023 WL 9424682 (N.D. Ga. Dec. 28, 2023).

Nor have Defendants offered evidence that a remedial map cannot be feasibly implemented even if they wait for court action. Instead, they recite a series of potential hypothetically harms to election administrations—for example, "various County Boards and counties [] *may be affected* by a remedial reapportionment map" and "any changes in the statutory election schedule *can create* logistical and feasibility challenges for the State Election Commission Defendants and the affected County Boards." Mot. at 6-7 (emphases added). But tellingly, nothing in State Election Commission Director Knapp's untested declaration supports—let alone suggests—that implementing a congressional map at this point or any other would be unduly burdensome or otherwise infeasible, which may explain why Defendants can only offer hypotheticals.[6] *See* Knapp Aff. at 2-5. His recitation of administrative redistricting tasks lends no support to Defendants' claim either. That is because the question before the Court is whether Election Commission Defendants can perform their usual duties for the election, and nothing in Director Knapp's affidavit suggests otherwise. And these routine assignments do not amount to the "heroic efforts" Defendants claim would be needed for both state and county election officials. *See* Mot. at 7.

Defendants' unsubstantiated and conclusory claims that adopting a remedial map at this stage could lead to voter and election administrative confusion and chaos for candidates fare no better. Neither Director Knapp's declaration nor Defendants' motion cite—let alone detail—how adopting a congressional remedial map would create confusion for voters or election officials. *See generally* Mot. & Knapp Aff.. And there is no reason to support a risk of hypothetical confusion

[6] Director Knapp submitted an affidavit that neither Plaintiffs nor the Court has had the opportunity to question to assess the veracity of his claims. An opportunity to question Defendant Knapp is even more necessary because Defendants cite to his declaration to lend support to allegations on election administration and confusion to voters and election officials on which his affidavit remains silent. This, among other reasons, is why a conference on Defendants' motion would aid the Court and parties at this juncture.

over the undisputed irreparable harm to more than 190,000 voters who would have to cast their ballots in an unconstitutional district. But even if the Court does consider any potential hypothetical confusion to candidates, Mot. at 7, Defendants, once again, offer no evidence or testimony from or about a single candidate to verify their claim. *See id.*

In Justice Kavanaugh's concurring opinion in *Merrill v. Milligan*, 142 S. Ct. 879 (2022), he identified other factors that he would consider, including the underlying merits of the case, the harm suffered to plaintiffs absent an injunction, and whether the plaintiffs unduly delayed in bringing the lawsuit. *Merrill*, 142 S. Ct. at 881. (Kavanaugh, J., concurring). These factors likewise do not support a stay. As the Court's January 6 Opinion demonstrates, the merits overwhelmingly favor Plaintiffs, *see supra* Section I, and Plaintiffs will suffer irreparable harms absent an injunction, *see infra* Section II(B)(1). Nor have Plaintiffs "unduly delayed bringing the complaint to court." *Merrill*, 142 S. Ct. at 881. On the contrary, Plaintiffs amended their lawsuit to add claims challenging the congressional map six days after the General Assembly passed it on January 26, 2022.

Ultimately, the Court should not sanction Defendants' attempt to circumvent the legal requirements imposed by the U.S. Constitution by seeking a stay so close to upcoming deadlines even though they had more than a year to refile such a motion. Nor should the Court allow Defendants to evade their legal obligations by invoking *Purcell* without providing any supporting evidence. For all these reasons, Defendants have not met their extraordinary burden to show that the Court does not remain on pace to adopt a remedial plan that would not move the June 11 primary even if the Supreme Court issues a decision in the next month. Still, should that calculus change, Defendants are incorrect that this Court lacks the authority to order changes to candidate qualifying periods and to postpone primary and general election deadlines and dates, and order

special elections. *See*, *e.g.*, *Smith v. Beasley*, 946 F. Supp. 1174, 1212 (D.S.C. 1996); *Wallace v. House*, 377 F. Supp. 1192, 1201 (W.D. La. 1974), *aff'd in part and rev'd in part on other grounds*, 515 F.2d 619 (5th Cir. 1975); *see also Smith v. Bd. of Supervisors of Brunswick Cnty.*, 801 F. Supp. 1513 (E.D. Va. 1992), *rev'd on other grounds,* 984 F.2d 1393 (4th Cir. 1993); *Clark v. Roemer*, 777 F. Supp. 471, 484 (M.D. La. 1991) ("Federal courts have ordered special elections to remedy violations of voting rights on many different occasions."); *Arbor Hill Concerned Citizens v. Cnty. of Albany*, 357 F.3d 260, 262 (2d Cir. 2004); *Goosby v. Town Bd. of Hempstead*, 180 F.3d 476, 498 (2d Cir. 1999); *Large v. Fremont Cnty.*, No. 05-cv-0270, 2010 WL 11508507, at *15 (D. Wyo. Aug. 10, 2010); *United States v. Osceola Cnty.*, 474 F. Supp. 2d 1254, 1256 (M.D. Fla. 2006); *Williams v. City of Dallas*, 734 F. Supp. 1317, 1318, 1415 (N.D. Tex. 1990). Indeed, special elections occur regularly in South Carolina.[7] For example, a special election for Congress was last held on June 16, 2017, in CD 5.[8] "Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971). Indeed, courts exercised this authority in South Carolina elections just three redistricting cycles ago. *See, e.g.*, *Beasley*, 946 F. Supp. at 1212. But for now, these considerations are premature and unwarranted.

[7] *See* S.C. Election Comm'n, *News & Press Releases, Special Election Results,* https://scvotes.gov/category/special-election-results/.

[8] *See* S.C. Election Comm'n, *News & Press Releases, U.S. House of Representatives District 5 Special Election* (July 16, 2017), https://scvotes.gov/u-s-house-of-representatives-district-5-special-election/.

In CD 1, a special election was held on March 15, 2013. *See* S.C. Election Comm'n, *News & Press Releases, U.S. House of Representatives District 1 Special Election* (last updated May 7, 2013), https://scvotes.gov/u-s-house-of-representatives-district-1-special-election/.

B. The balance of harms weighs against a stay.

Equitable considerations also weigh heavily against a stay of the district court's preliminary injunction. The right to vote is one of the most fundamental rights in our democratic system of government and is afforded special protection. *See Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) ("Other rights, even the most basic, are illusory if the right to vote is undermined."); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (Voting is 'a fundamental political right' that in turn protects all other rights)). Subjecting voters to a redistricting plan that has been deemed unlawful requires an "unusual" showing that doing so is a "[n]ecessity." *Upham v. Seamon*, 456 U.S. 37, 44 (1982); *see also Reynolds*, 377 U.S. at 585 ("[I]t would be the unusual case in which a court would be justified in not taking appropriate action to ensure that no further elections are conducted under [an] invalid plan."). Defendants make no such showing here.

1. Defendants fail to demonstrate any irreparable injury.

Defendants will not suffer irreparable harm absent a stay. As an initial matter, the Court should view Defendants' assertions of injury with considerable skepticism given that Defendants filed the instant stay application a week before the candidate qualifying deadline and over a year after the district court found the enacted congressional district to be unconstitutional. *See*, *e.g.*, *Chem. Weapons Working Grp. (CWWG) v. Dep't of the Army*, 101 F.3d 1360, 1361-62 (10th Cir. 1996) (denying motion for stay pending appeal because appellants waited several weeks before seeking the stay and that delay belied their claim of "extreme urgency"); *Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 39-40 (2d Cir. 1993) (denying motion for stay pending appeal because appellant waited five weeks after district court decision before seeking stay and thus appellant's

"inexcusable delay . . . severely undermine[d] [its] argument that absent a stay irreparable harm would result").

Even so, a remedial map is not necessary before the candidate filing deadline because the location of congressional district lines within a state does not impact a candidate's qualification for U.S. House of Representatives. Under Article I, Section 2 of the U.S. Constitution, a candidate for U.S. Congress must be at least 25 years old, must have been a citizen of the United States for at least 7 years, and must, "*when elected*, be an Inhabitant of that State in which he shall be chosen." U.S. Const. art. I, § 2, cl. 2 (emphasis added). Though South Carolina enforces different residency requirements for candidates for state office, the U.S. Constitution exclusively controls qualifications for membership in the U.S. House of Representatives. *See Schaefer v. Townsend*, 215 F.3d 1031 (9th Cir. 2000) (striking down application of California rule requiring residency be shown upon the filing of nomination papers). Because a candidate need only be a resident of South Carolina when elected, electoral boundaries need not be settled before candidate filings for Congress.

Nevertheless, under this Court's order, the State has ample opportunity to draw a remedial plan. February 4 Order at 5. If it does so, the State's only "injury" will be the short delay in the filing deadline, and the related potential administrative inconvenience to election officials and a few candidates. *See Covington v. North Carolina*, No. 1:15CV399, 2018 WL 604732, at *6 (M.D.N.C. Jan. 26, 2018) (denying a stay despite the "inconvenience" to "legislators having to adjust their personal, legislative, or campaign schedules"), stay denied in relevant part, 138 S. Ct. 974 (2018).

Courts have repeatedly held that potential administrative inconveniences for Defendants are not irreparable harm and cannot overcome the significant harm that the panel found Plaintiffs

would suffer under the Plan. *Cf. Abbott v. Perez*, 585 U.S. 579, 602-03 (2018) (holding that enjoining enforcement of enacted statute "would seriously and irreparably harm the State" *unless the statute is unlawful*); *Bethune-Hill v. Va. State Bd. of Elections*, No. 3:14-CV-852, 2018 WL 11393922, at *1 (E.D. Va. Aug. 30, 2018) ("[T]he risk that a stay wholly would deprive the plaintiffs of a remedy significantly outweighs the inconvenience and any other detriments that the intervenors may experience in re-drawing the districts."). The reality is that "legislative districts change frequently," including "after every decennial census." *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. at 1955). And in any event, Defendants' argument ignores this Court's express finding that a remedial congressional plan can be implemented in advance of the 2024 elections. February 4 Order at pages 5-6.

2. *Plaintiffs and other voters will be irreparably harmed by a partial stay*.

The irreparable harm to Plaintiffs and Black South Carolinians from conducting an election using an illegal districting map far outweighs any administrative burden on Defendants. A district constructed for unjustified and predominately racial reasons "bears an uncomfortable resemblance to political apartheid" and amounts to use of "racial stereotypes." *Shaw v. Reno*, 509 U.S. 630, 647 (1993). Residing in such districts is a palpable and ongoing injury to Plaintiffs and *every* voter who resides in the challenged district.

It is a fundamental principle of voting rights jurisprudence that Plaintiffs and other voters in the challenged district will suffer irreparable injury if they are forced to continue to reside in and cast ballots in an unconstitutional district. *See*, *e.g.*, *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247-48 (4th Cir. 2014) (collecting cases). Plaintiffs subjected to a racially discriminatory map are suffering an ongoing constitutional violation, a violation of their fundamental rights for which there is no adequate remedy. "[O]nce the election occurs, there can be no do-over and no redress" for citizens whose voting rights were violated. *Id.* at 247.

Accordingly, "[c]ourts routinely deem restrictions on fundamental voting rights irreparable injury." *Id*. (citing *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986)).

3. *A partial stay is against the public interest*.

The Court has already recognized that the injunction issued in this case "best serves the public interest." Op. at 31; *see also* February 4 Order at 6. Moreover, when a legislature impermissibly uses race to draw congressional districts, the "the public interest aligns with the Plaintiffs' . . . interests, and thus militates against staying implementation of a remedy." *Personhuballah v. Alcorn*, 155 F. Supp. 3d at 560 . That follows because the harms are necessarily "harms to every voter" in the racially gerrymandered district, all of whom have been duly injured by improper racial sorting. *Id.* at 560-61. The court in *Harris v. McCrory* denied a similar stay motion upon finding that, *inter alia*, the harms to the state are public harms, and "[t]he public has an interest in having congressional representatives elected in accordance with the Constitution." 2016 WL 6920368, at *2. Moreover, "[i]t is clear that it would not be equitable or in the public's interest to allow the state . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (quoting *United States v. Arizona*, 641 F.3d 339, 366 (9th Cir. 2011)).

Accordingly, the public interest would most assuredly be served by enjoining implementation of a congressional districting scheme that violates the U.S. Constitution.

CONCLUSION

Defendants' Motion for a Partial Stay should be denied. Plaintiffs further respectfully ask for a status conference or hearing on the remedial process as early as this Wednesday, March 13 or soon thereafter at the Court's convenience.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2024, a true and correct copy of the foregoing was served on all counsel of record by electronic mail.

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