

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 RECONSIDERATION**

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 Reconsideration filed this date, which merely re-argues the House's previously denied request to take discovery from the Coalition Appellants and other plaintiffs below (collectively, the "Plaintiffs"). As the Court noted in rejecting the House's same arguments in its Motion for Further Relinquishment of Jurisdiction, that motion was already an attempt to seek reconsideration of its earlier opinion and order remanding the case:

The Court further denies the House's motion to the extent it seeks any discovery. The Court's opinion did not contemplate discovery during the remedial proceedings, as it contemplated instead that the remedial map-drawing would occur transparently and on the record. The Court declines to revisit this issue or to authorize any discovery beyond what is part of the judicial or legislative record.

(Order of Sept. 4, 2015 at 4.)

The House refuses to acknowledge and accept what this Court made clear in *Apportionment VII*, even though it directly references the relevant footnote where the Court addressed Legislative claims that alternative maps submitted by the Coalition Plaintiffs were drawn by operatives aligned with the Democratic Party. (Motion at 5 (citing *League of Women Voters of Fla. v. Detzner*, 40 Fla. L. Weekly S432, 2015 WL 4130852, at *34 n.11 (Fla. July 9, 2015) (“*Apportionment VII*”)).) The House’s suggestion that the Court did not consider the maps that were submitted during the summary judgment proceedings because of the “tainted” origin of those maps is belied by the fact that the Court rejected the Legislature’s pleas not to consider the maps the Plaintiffs submitted during trial. The Court did consider the maps the Plaintiffs submitted during the trial, and its decision not to consider maps that were not submitted at trial was but a recognition of the way the record on appeal works. Matters not submitted during a trial are not typically considered by an appellate court reviewing the result of the trial.

The Court explained in that footnote exactly why the Legislature’s position was incorrect:

The Legislature has strongly disputed the relevance of these alternative maps, going so far as to assert that this Court should not consider the alternative maps at all because they were either drawn by partisan operatives aligned with the Democratic Party or of unknown origin. But alternative maps are not on trial themselves, as is the Legislature’s map, and they can provide “relevant proof that the Legislature’s apportionment plans consist of district configurations that are not explained other than by the Legislature considering

impermissible factors, such as intentionally favoring a political party or an incumbent”—as the trial court found the Legislature to have done in this case.

Apportionment VII, 2015 WL 4130852, at *34 n.11.

That remains true to this day. The “remedial map-drawing” that the Court contemplated “would occur transparently and on the record” was the map-drawing it contemplated the Legislature would do pursuant to its constitutional duties. The Plaintiffs do not get to draw the maps, and the alternative maps they have submitted are not on trial. Drawing the maps is the job of the Legislature, or alternatively of this Court if the Legislature continues to abdicate its duty.

Nor is the Plaintiffs’ alleged intent on trial.¹ Nothing in *Apportionment VII* even remotely infringes on the right of even the most partisan organizations or individuals to submit maps for even the most partisan of purposes. To the contrary, the Court made very clear that the constitutional amendment at stake restrains only the authority of the Legislature and in no way refrains the rights of citizens to provide input:

As to the claim regarding public participation, we clarify that we do not read the trial court's order as discouraging public input in redistricting. There is nothing inherently in violation of the law or the Florida Constitution for an individual to anonymously submit a map

¹ The Coalition Plaintiffs’ intent is irrelevant in this case, but they state for the public record that their interest is in promoting and enforcing the FairDistricts Amendments to ensure that “the age-old practice of partisan political gerrymandering – where the political party and representatives in power manipulate the district boundaries to their advantage” is no more. *Id.* at *1.

to the Legislature for consideration or to submit a map through a third party. We conclude that any comments by the trial court to the contrary were made in the specific context of the facts and circumstances of this case and do not amount to error.

2015 WL 4130852 at *3 n.4.

Thus, for example, the fact that Republican partisan operatives submitted maps to the Legislature was not the reason the maps were struck down. They had every right to submit whatever input they wanted, and nothing in *Apportionment VII* suggests to the contrary. The overpowering evidence of unconstitutional intent by the Legislature is that at the very time it was touting a “transparent” process, it was conspiring with those same political operatives to hide from the view of the public and, more importantly, this Court, that partisan maps were being secretly submitted and adopted through a shadow process.

The Coalition Plaintiffs are not secretly submitting proposed maps through subterfuge, and the courts are certainly not conspiring with the Plaintiffs to secretly consider these maps. The Plaintiffs have submitted their maps through public filings in court under their own names that directly identify who helped prepare the maps. The purpose of the alternative maps is simply to show there are several easily available means that maximize constitutional compliance without resulting in a disproportionate advantage to one party, which is “relevant proof that the Legislature’s apportionment plans consist of district configurations that are not

explained other than by the Legislature considering impermissible factors, such as intentionally favoring a policy party or an incumbent.” *Id.* at *34 n.11.

In any event, the Coalition Plaintiffs have already voluntarily disclosed who assisted in preparing their alternative maps,² and the House’s motion demonstrates that the record already shows that these organizations have a history of helping Democrats. So even if that were relevant – and it is not – there is no need for discovery, and the only effects of allowing discovery at this late stage, one week before the remedial hearing is to occur, would be to create further unnecessary delay in remedying unconstitutional districts in time for the 2016 election and further driving up the enormous costs the Plaintiffs have had to incur to enforce the FairDistricts Amendment when the Attorney General has refused to even take a position – even after constitutional violations have been found by the trial court

² After a hearing where the Coalition Plaintiffs agreed to voluntarily disclose this information and the trial court ruled it should be disclosed in any event, the parties submitted a scheduling order that has not yet been entered, but provides the following requirement for any proposed remedial map to be considered at the upcoming evidentiary hearing:

The disclosing party shall identify every person involved in drawing, reviewing, directing, or approving the proposed remedial plan. The Court will not consider any proposed remedial plan that is not timely disclosed in compliance with all provisions of this Order.

(Exhibit A). As the House’s motion makes clear, the parties have already complied with that provision by disclosing the required information. This should render the reasons for the House’s renewed request for discovery moot.

and affirmed by this Court and even after the Senate has **admitted** violating the parallel amendment barring partisan gerrymandering in state redistricting.

The House's improper attempt to merely reargue the discovery issue yet again should be promptly denied.

Respectfully submitted,

THE MILLS FIRM, P.A.

/s/ John S. Mills

John S. Mills
Florida Bar No. 0107719
jmills@mills-appeals.com
Andrew D. Manko
Florida Bar No. 018853
amanko@mills-appeals.com
Courtney Brewer
Florida Bar No. 0890901
cbrewer@mills-appeals.com
service@mills-appeals.com (secondary)
203 North Gadsden Street, Suite 1A
Tallahassee, Florida 32301
(850) 765-0897
(850) 270-2474 facsimile

and

KING, BLACKWELL, ZEHNDER &
WERMUTH, P.A.

David B. King
Florida Bar No.: 0093426
dking@kbzwlaw.com
Thomas A. Zehnder
Florida Bar No.: 0063274
tzehnder@kbzwlaw.com
Frederick S. Wermuth

Florida Bar No.: 0184111
fwerdmuth@kbzwlaw.com
Vincent Falcone III
Florida Bar No.: 0058553
vfalcone@kbzwlaw.com
P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472
Facsimile: (407) 648-0161

Counsel for Appellants The League of Women Voters of Florida, Common Cause, Brenda Ann Holt, Roland Sanchez-Medina Jr., J. Steele Olmstead, and Robert Allen Schaeffer

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 September 17, 2015:

Michael B. DeSanctis
Jessica Ring Amunson
Paul Smith
Jenner & Block, LLP
1099 New York Avenue NW
Suite 900
Washington, DC 20001
mdesanctis@jenner.com
jamunson@jenner.com
PSmith@jenner.com

J. Gerald Hebert
191 Somerville Street, #415
Alexandria, VA 22304
ghebert@campainglegalcenter.org

Gerald E. Greenberg
Adam M. Schachter

Ronald G. Meyer
Lynn Hearn
Meyer, Brooks, Demma and Blohm, P.A.
131 North Gadsden Street
Post Office Box 1547
Tallahassee, FL 32302
rmeyer@meyerbrookslaw.com
lhearn@meyerbrookslaw.com

Counsel for Appellants
Blaine Winship
Office of the Attorney General of Florida
The Capitol, Suite PL-01
Tallahassee, FL 32399-1050

Gelbert Schachter & Greenberg, P.A.
1441 Brickell Avenue, Suite 1420
Miami, FL 33131
ggreenberg@gsgpa.com
aschachter@gsgpa.com
dgonzalez@gsgpa.com

Counsel for Appellants

George T. Levesque
The Florida Senate
422 The Capitol
Tallahassee, FL 32399-1300
levesque.george@flsenate.gov
glevesque4@comcast.net
everette.shirlyne@flsenate.gov

Michael A. Carvin
Louis K. Fisher
Jones Day
51 Louisiana Avenue N.W.
Washington, D.C. 20001
macarvin@jonesday.com
lkfisher@jonesday.com

Raoul G. Cantero
Jason N. Zakia
Jesse L. Green
White & Case LLP
200 South Biscayne Blvd., Ste. 4900
Miami, FL 33131
rcantero@whitecase.com
jzakia@whitecase.com
jgreen@whitecase.com
ldominguez@whitecase.com
lorozco@whitecase.com

Counsel for Appellees Fla. Senate & Senate Pres.

Blaine.winship@myfloridalegal.com

*Counsel for Appellee Attorney General
Pam Bondi*

J. Andrew Atkinson
Ashley Davis
Florida Department of State
500 S. Bronough Street
Tallahassee, FL 32399
jandrew.atkinson@dos.myflorida.com
ashley.davis@dos.myflorida.com
Diane.wint@dos.myflorida.com

*Counsel for Appellees Florida Secretary
of State Ken Detzner*

Charles T. Wells
George N. Meros, Jr.
Jason L. Unger
Andy Bardos
GrayRobinson, P.A.
301 South Bronough Street, Suite 600
Tallahassee, FL 32301
Charles.Wells@gray-robinson.com
George.Meros@gray-robinson.com
Jason.Unger@gray-robinson.com
Andy.Bardos@gray-robinson.com
croberts@gray-robinson.com
tbarreiro@gray-robinson.com
mwilkinson@gray-robinson.com

Matthew J. Carson
General Counsel
Florida House of Representatives
422 The Capitol
Tallahassee, FL 32399-1300
matthew.carson@myfloridahouse.gov

Counsel for Appellees Fla. House and

Abba Khanna
Kevin J. Hamilton
Ryan Spear
Perkins Coie, LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
akhanna@perkinscoie.com
khamilton@perkinscoie.com
rspear@perkinscoie.com

John M. Devaney
Mark Elias
Elizabeth Frost
Perkins Coie, LLP
700 Thirteenth Street, NW, Ste. 700
Washington, DC 20005
jdevaney@perkinscoie.com
melias@perkinscoie.com
efrost@perkinscoie.com

Mark Herron
Robert Telfer
Messer Caparello & Self, P.A.
P.O. Box 1876
Tallahassee, FL 32302-1876
mherron@lawfla.com
rtelfer@lawfla.com
clowell@lawfla.com
statecourtpleadings@lawfla.com

Counsel for Romo Appellants

Martha A. Pardo
LatinoJustice PRLDEF
523 West Colonial Drive
Orlando, FL 32804
mpardo@latinojustice.org

Counsel for Amicus Curiae
LatinoJustice PRLDEF, Florida New

Speaker
Allison J. Riggs, Pro Hac Vice
Anita S. Earls
Southern Coalition For Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
anita@southerncoalition.org

Victor L. Goode
Dorcas R. Gilmore
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-3297
vgoode@naacpnet.org
dgilmore@naacpnet.org

Nancy Abudu
ACLU Foundation of Florida
4500 Biscayne Blvd., Ste. 340
Miami, FL 33137
NAbudu@aclufl.org

Counsel for Appellee NAACP

Majority, and Mi Familia Vota

/s/ John S. Mills

Attorney

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

RENE ROMO, an individual, *et al.*,

Plaintiffs,

v.

Case No. 2012-CA-000412

KEN DETZNER, in his official capacity
as Florida Secretary of State, and PAMELA
JO BONDI, in her official capacity as
Attorney General,

Defendants.

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

Plaintiffs,

v.

Case No. 2012-CA-000490

KEN DETZNER, in his official capacity as
Florida Secretary of State, *et al.*,

Defendants.

AGREED SCHEDULING ORDER

This matter is before the Court upon the Florida Supreme Court's Order of September 4, 2015 (Case No. SC14-1905). The Court's Order followed a special legislative session at which the Florida House of Representatives and the Florida Senate each passed, but ultimately were unable to agree upon, a remedial congressional redistricting plan. In its Order, the Supreme Court directed this Court, at an evidentiary hearing, to consider proposed remedial congressional redistricting plans presented by the parties, especially focusing on the map passed during the

special session by the Florida House of Representatives (and any amendments offered thereto), the map passed during the special session by the Florida Senate (and any amendments offered thereto), and areas of agreement between the legislative chambers. The Order further directs this Court to make a recommendation to the Supreme Court no later than October 17, 2015, as to which map proposed by the parties—or which portions of each map—best fulfills the specific directions of the Supreme Court’s opinion in *League of Women Voters of Florida v. Detzner*, 40 Fla. L. Weekly S432, 2015 WL 4130852 (Fla. July 9, 2015), and all constitutional requirements.

The parties having conferred and submitted an agreed scheduling order, and the Court, having reviewed and approved the parties’ proposal, enters this Order.

1. On or before **Monday, September 14, 2015**, each party that intends to present a proposed remedial plan at the evidentiary hearing shall serve the proposed remedial plan in .doj format. The disclosing party shall identify every person involved in drawing, reviewing, directing, or approving the proposed remedial plan. The Court will not consider any proposed remedial plan that is not timely disclosed in compliance with all provisions of this Order.

2. On or before **Tuesday, September 15, 2015**: With respect to any proposed remedial plan disclosed pursuant to Paragraph 1, each party shall file all information described in the Supreme Court’s order of relinquishment dated July 9, 2015 (Case No. SC14-1905).

3. On or before **Friday, September 18, 2015**:

- a. Each party that intends to challenge the constitutionality of any district in any proposed remedial plan disclosed pursuant to Paragraph 1 shall serve a memorandum that identifies (i) the challenged districts; (ii) each constitutional standard that each challenged district allegedly violates; and (iii) the factual bases of each alleged violation; and

b. Any party may serve one or more expert witness reports, the subject of which shall be limited to the compliance or non-compliance of any proposed remedial plan disclosed pursuant to Paragraph 1 with the federal Voting Rights Act or the corresponding minority-protection provisions of Article III, Section 20(a) of the Florida Constitution. Any expert report shall set forth the qualifications of the expert witness and a complete statement of the expert's opinions, and shall identify all data and materials relied upon by the expert or, if not publicly available, shall produce such data and materials, in forming those opinions. Expert opinions that are not disclosed in accordance with this Paragraph 3 may not be presented at the evidentiary hearing.

In light of the prior commitments of its counsel, the Florida State Conference of NAACP Branches may serve the disclosures required by this Paragraph 3 on **Monday, September 21, 2015**.

4. On or before September 21, 2015, each party shall serve a list of all witnesses, including known impeachment and rebuttal witnesses, whom the party might call at the evidentiary hearing, and of all exhibits that the party 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. The exhibit list shall enumerate all documents identified as those the party intends to present at the evidentiary hearing referenced in Paragraph 7 below.

5. Consistent with the Supreme Court's Order of September 4, 2015, and with the Supreme Court's expectation that the remedial map-drawing would occur transparently and on the record, no discovery shall be permitted during these remedial proceedings.

6. This Order supersedes the Agreed Scheduling Order entered on July 29, 2015.

7. The evidentiary hearing shall begin at 9:30 a.m. on **September 24, 2015**, in Courtroom _____. The hearing shall continue from day to day as necessary, but conclude no later than **September 28, 2015**.

DONE AND ORDERED this ____ day of September, 2015.

Terry P. Lewis
Circuit Judge

Copies to all counsel of record

\255036\8 - # 599934 v1