

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DAN MCCONCHIE, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, JIM DURKIN, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, JAMES RIVERA, ANNA DE LA TORRE, DOLORES DIAZ, FELIPE LUNA JR., SALVADOR TREMILLO, CHRISTOPHER ROMERO, the REPUBLICAN CAUCUS OF THE ILLINOIS SENATE, the REPUBLICAN CAUCUS OF THE ILLINOIS HOUSE OF REPRESENTATIVES, and the ILLINOIS REPUBLICAN PARTY,

Plaintiffs,

vs.

IAN K. LINNABARY, CASANDRA B. WATSON, WILLIAM J. CADIGAN, LAURA K. DONAHUE, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, and RICK S. TERVEN, SR., in their official capacities as members of the Illinois State Board of Elections, EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives, the OFFICE OF SPEAKER OF THE ILLINOIS HOUSE OF REPRESENTATIVES, DON HARMON, in his official capacity as President of the Illinois Senate, and the OFFICE OF THE PRESIDENT OF THE ILLINOIS SENATE,

Defendants.

Case No. 1:21-cv-03091

Circuit Judge Michael B. Brennan
Chief District Judge Jon E. DeGuilio
District Judge Robert M. Dow, Jr.

Three-Judge Court
Pursuant to 28 U.S.C. § 2284(a)

DEFENDANTS' MOTION FOR CLARIFICATION

Pursuant to Federal Rule of Civil Procedure 54(b), Defendants Emanuel Christopher Welch, in his official capacity as Speaker of the Illinois House of Representatives, the Office of the Speaker of the House of Representatives, Don Harmon, in his official capacity as President of the Illinois Senate, and the Office of the President of the Illinois Senate, by and through their

counsel (collectively, “Defendants”), hereby move the Court and request clarification regarding the three-judge Panel’s October 19, 2021 Memorandum Opinion and Order, ECF No. 131 (“Order”). *See Loop Paper Recycling, Inc. v. JC Horizon, Ltd.*, 2012 WL 266312 (N.D. Ill. Jan. 23, 2012) (interpreting motion for clarification Rule 54(b)); *Panoramic Stock Images, Ltd. v. McGraw-Hill Global Education Holdings, LLC*, 2015 WL 393381 (N.D. Ill. Jan. 27, 2015) (same).

I. PROCEDURAL BACKGROUND

On October 19, 2021, the three-judge Panel issued its Order on Defendants’ motions to dismiss and Plaintiffs’ motions for summary judgment. In granting Plaintiffs’ motions for summary judgment, the Panel held that “the June Redistricting Plan is unconstitutional as a matter of law.” Order at 36. The Order then “turn[s] finally to the issues of remedies” and “award[s] the relief requested by the Contreras Plaintiffs in full,” which includes a schedule for “the creation of a court-approved plan.” *Id.* at 38. The Order refers to the current stage of proceedings in this action as “the remedial phase.” *Id.* at 40.

The Order holds that the September Redistricting Plan, passed by the Illinois General Assembly and signed into law as Public Act 102-663, is the starting point for the remedial phase proceedings. *Id.* at 38-40. The Panel ordered that the action will proceed with “Plaintiffs’ submissions for proposed revisions to the September Redistricting Plan” due on November 8, and Defendants’ responses and objections to Plaintiffs’ submissions due on November 18. *Id.* at 43. In setting this schedule, the Panel instructed that the Parties are not to file dispositive motions under Rule 12(b) or Rule 56 challenging the allegations of the Second Amended Complaints. *Id.*

On October 20, 2021 Magistrate Judge Jantz issued an amended scheduling order (“Scheduling Order”), which appears to contemplate that trial will proceed in this action. ECF No. 132. The Scheduling Order maintains the previously-set deadlines for fact and expert discovery,

trial stipulations, motions in limine, and other pre-trial deadlines, and inserts the Panel's November 8 and November 18 deadlines into the existing schedule.

Judge Jantz will hold a status conference on Friday, October 22, 2021 to discuss the outstanding scheduling issues and "any other scheduling matters in light of the three-judge panel's" Order. ECF No. 132.

II. REQUEST FOR CLARIFICATION

Defendants seek clarification regarding two aspects of the Panel's Order.

First, Defendants seek clarification regarding whether the Panel intends to hold a trial regarding the validity of the September Map, or whether (as Defendants understand) the Panel intends to approve a redistricting map following the Parties' submissions regarding the September Map, after which any Party may challenge the Court-approved map through motion practice and, if warranted, trial, or appeal. Defendants believe clarification of this question has significant implications for the existing Scheduling Order. Defendants interpret the Panel's holdings that we are now in the "remedial phase of the proceedings" and that Defendants are not entitled to file dispositive motions in response to the Second Amended Complaints, Order at 40, to have also cancelled any trial that would have followed *only if* those dispositive motions failed—as well as any related pre-trial deadlines. Defendants' interpretation of the Panel's Order is based on the following:

1. The Court's Order is clear that the Federal Rules' procedure for litigating the validity of the September Map, including Defendants' opportunity to file dispositive motions in response to the Second Amended Complaints, will not be followed. *Id.* at 3, 40, 43. It follows that a trial cannot proceed on the claims in the Second Amended Complaints without Defendants' first having the opportunity to dispose of Plaintiffs' claims

- through motions to dismiss and for summary judgment under Rules 12(b) and 56. *See, e.g.,* Fed. R. Civ. P. 56(a) (“A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought.”); *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986) (“Rule 56 must be construed with due regard . . . for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis.”).
2. In redistricting cases, a remedial phase is the relief granted to Plaintiffs *after* a challenged plan has been declared invalid through summary judgment or trial. Defendants interpret the Order as changing the course of the proceedings. Rather than continuing to litigate the validity of the September Map now pursuant to the Federal Rules (including through discovery and dispositive motions), the Court has designated the current phase of proceedings as “the remedial phase” that follows the Panel’s finding that the June Map is invalid.
 3. The Court has stated its intention to “proceed therefore toward the approval of a map for Illinois legislative districts for the next decade using the September Redistricting Plan as a starting point[.]” *Id.* at 40. Once the Court has approved a Map, if any Party seeks to challenge the Court-approved map, those claims must be addressed on appeal, or pleaded in subsequent complaints, and then litigated consistent with the Federal Rules on a new and appropriate schedule that protects the Parties’ due process rights.

If Defendants’ interpretation is correct, the Scheduling Order’s existing discovery and pre-trial deadlines should be stricken to clarify that fact discovery is closed, and pre-trial filings are

not necessary in the current remedial posture.¹ Only Plaintiffs' November 8 deadline and Defendants' November 18 deadline should remain at this time. Defendants anticipate that the Parties' expert reports will be submitted in support of those submissions.

If Defendants' interpretation is not correct and the Court contemplates a trial following the remedial phase, the Scheduling Order's discovery and pre-trial deadlines should be extended to a reasonable time following the Court's approval of a redistricting plan. Any adjusted scheduling order, to the extent it contemplates a trial, must also provide time for the Parties to file dispositive motions under Rule 12(b) and/or Rule 56 in response to the then-operative complaints.²

Second, Defendants request the Court's clarification that the September Map has not been held invalid. Rather, the Court may approve the General Assembly's September Map during the current remedial phase, or a modified version incorporating Plaintiffs' submissions.

¹ The Parties have already engaged in significant fact discovery on the September Map pursuant to Judge Jantz's prior orders. A list of Defendants' productions in response to Plaintiffs' discovery requests is available on the *Contreras* docket, No. 1:21-cv-3139, ECF No. 100 at 5-6. Defendants' productions include all data used or consulted in creating the September Map, all data and information necessary for Plaintiffs to reconstruct or analyze the September Map, all transcripts and submissions from the public related to the September Map, and communications between Defendants and their consultants, experts, and requested legislative members, among other materials.

² If the current Scheduling Order remains in place for any reason, Defendants submit that the expert discovery deadlines should be stricken in recognition that the Parties' expert reports will be submitted in support of the Panel's ordered November 8 and November 18 submissions. In other words, the current schedule should be streamlined to avoid duplicative submissions just days apart. Consolidation of the current expert discovery schedule with the Panel's ordered submissions is also appropriate because the current schedule is prejudicial to Defendants: it would require them to submit their expert reports in advance of Plaintiffs' November 8 submission, which will become the operative challenged to the September Map.

III. CONCLUSION

Defendants respectfully request the Court's clarification of the aspects of its October 19, 2021 Order described above.

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Respectfully submitted,

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