IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

Jeffrey Thomas, Jr., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Civil Action No. 3:22-cv-427**
	)	
Susan Beals, et al.,	)	
	)	
Defendants.	)	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS THE AMENDED COMPLAINT UNDER FEDERAL RULES OF CIVIL PROCEDURE 12(b)(1) AND 12(b)(6)

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INTRODUCTION

Plaintiffs' opposition fails to respond meaningfully to most of Defendants' arguments, misconstrues other arguments, and relies heavily on inapposite caselaw. The opposition thus confirms that the case should be dismissed.

First, in response to Defendants' jurisdictional arguments, Plaintiffs claim that this Court has already decided its jurisdiction over this case in *Goldman v. Brink*, No. 3:21-cv-420, 2022 WL 2024745 (E.D. Va. June 6, 2022) ("*Goldman II*"). Not so. Although Plaintiffs have different standing problems than Goldman, they likewise lack standing. Their claims are not redressable because they seek only prospective injunctive relief when their alleged injury occurred entirely in the past. For the same reason, their claims fall outside the scope of *Ex parte Young*, and Virginia's sovereign immunity therefore bars the suit. *Goldman II* did not consider these issues.

Second, Plaintiffs provide nothing to defend their substantive claims other than to repeatedly invoke *Cosner v. Dalton*, 522 F. Supp. 350 (E.D. Va. 1981). That case is neither binding nor apposite. Unlike in *Cosner*, Plaintiffs do not claim that a newly created map is unconstitutional. Rather, they challenge Defendants' decision to use the old map for the 2021 House of Delegates election after the 2020 Census data did not arrive until months after the primary elections and only 23 days before the general election began. *Cosner* simply did not address the relevant question—whether the Constitution prohibits the use of the old map when the new census data are not available in time to redraw district lines before an election. Further, Plaintiffs do not address meaningfully the wealth of precedent cited by Defendants demonstrating that the use of the old maps does not violate the Constitution in these circumstances. And they do not address at all their Voting Rights Act claim and have therefore abandoned it.

Third, Plaintiffs' delay in filing suit bars the injunctive relief they seek under the doctrine of laches and the *Purcell* principle. Plaintiffs offer no reason for their delay, instead arguing only that they should have been permitted to intervene in *Goldman v. Brink*, No. 3:21-cv-420 (E.D. Va.) (hereinafter, "*Goldman*"). But Plaintiffs could have filed their own suit at any time. They simply chose not to file until the eleventh hour, despite having notice that Goldman's claims suffered from serious jurisdictional deficiencies. And the relief they seek—the dissolution of the House of Delegates and 100 special elections held in fewer than four months—would be highly disruptive and cause chaos in Virginia's ongoing electoral process. The motion to dismiss should be granted.

ARGUMENT

I. This Court lacks jurisdiction because Plaintiffs lack standing and their claims are barred by sovereign immunity.

In response to Defendants' showing that this Court lacks jurisdiction, Plaintiffs contend only that Defendants' arguments "disregard the Court's instructions and rulings" in *Goldman*. Pls.' Opp. to Defs.' Mot. to Dismiss ("Opp.") 5 (ECF No. 26). This argument is a non sequitur. This case is distinct from *Goldman*. Defendants' motion therefore raises issues neither raised nor decided in *Goldman*.

Plaintiffs argue that they have standing because "all three Plaintiffs voted in the 2021 elections in underrepresented House of Delegates districts." Opp. 5. But Defendants did not challenge Plaintiffs' standing on the grounds that they failed to vote or live in allegedly overrepresented districts. Rather, Plaintiffs suffer from a different, but no less serious, standing flaw: they have failed to "establish an ongoing or future injury in fact" that could support the requested injunctive relief. *Kerry v. Wilson*, 885 F.3d 280, 287 (4th Cir. 2018); Mem. in Support

of Mot. to Dismiss ("MTD Br.") 8–12 (ECF No. 25).[1] This Court in *Goldman* expressly declined to decide a similar alternative jurisdictional argument because Goldman lacked standing for a different reason. *Goldman II*, 2022 WL 2024745, at *15 n.19.

Plaintiffs respond only that Defendants' standing argument is "senseless," "ignor[es] the dozens of redistricting cases Defendants cite, [and] would bar the courthouse doors for any malapportionment claim." Opp. 4. This characterization is inaccurate. The injury and redressability problems here rarely arise because malapportionment claims almost always challenge *new* maps that the defendants *intend to use for future elections*. See, *e.g.*, MTD Br. 10, 19–23. Here, however, Plaintiffs have conceded that future elections using the new maps will be constitutional. See Amended Complaint ("AC") ¶¶ 69, 71, 81 (ECF No. 14). Plaintiffs challenge only the use of the old maps for the 2021 House of Delegates election. But, as the motion to dismiss explained, this alleged injury took place entirely in the past and will not repeat itself because the districts were subsequently reapportioned. See MTD Br. 8–12. Plaintiffs have failed to carry their burden of establishing standing, and the case should therefore be dismissed. *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 796 (2021).

Plaintiffs' claims are also barred by sovereign immunity. Again, Plaintiffs do not address Defendants' arguments. They instead accuse Defendants of "[i]gnoring the Court's directions" and "offer[ing] an off[-]topic stemwinder." Opp. 5. But the Court merely instructed how it preferred Defendants to argue sovereign immunity "if it's the same argument as before" in *Goldman*. June 13, 2022 Hr'g Tr. 8:10–15 (ECF No. 13). The sovereign immunity arguments Defendants raise in

[1] Contrary to Plaintiffs' assertions, Defendants argue that Plaintiffs lack standing, not that their claims are moot. See Opp. 8. Because Plaintiffs failed to establish a redressable injury from the outset of the litigation, the jurisdictional question is one of standing, not mootness. See *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 187 (4th Cir. 2018).

this case, however, are unique to the facts of this case and were not previously raised or decided in *Goldman v. Northam*, 566 F. Supp. 3d 490 (E.D. Va. 2021) ("*Goldman I*").

Accordingly, Plaintiffs' claim that this Court in *Goldman I* already rejected the sovereign immunity arguments that the Defendants in this case raise, Opp. 5, is untrue. Indeed, insofar as this Court's decision in *Goldman I* considered Defendants' sovereign immunity arguments at all, it decided them in Defendants' favor. *Goldman I* held that if an entity "serves as an arm of the state for Eleventh Amendment purposes, the *Ex parte Young* exception does not apply to it, and the Court must dismiss Plaintiff[s'] claims." 566 F. Supp. 3d at 503; see also *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993) (explaining that *Ex parte Young* "has no application in suits against the States and their agencies, which are barred regardless of the relief sought"). Here, Plaintiffs do not dispute that the Virginia Department of Elections is "an arm of the state." See MTD Br. 13. It is accordingly entitled to sovereign immunity.

Plaintiffs instead rely on *Lee v. Virginia State Board of Elections*, 843 F.3d 592 (4th Cir. 2016), for the proposition that "the Virginia Department of Elections is also a proper party to election cases." Opp. 5. The court in *Lee*, however, never discussed sovereign immunity. See generally *Lee*, 843 F.3d 592. "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004); *United States v. Campbell*, 22 F.4th 438, 448 (4th Cir. 2022). Further, courts have no obligation to raise sovereign immunity *sua sponte*. See *Zito v. North Carolina Coastal Res. Comm'n*, 8 F.4th 281, 284 (4th Cir. 2021) ("[S]overeign immunity is waivable."). *Lee* therefore is irrelevant to the sovereign immunity question.

Plaintiffs' claims against all Defendants are also barred by sovereign immunity for the same reason that Plaintiffs lack standing—their claims rest solely on alleged conduct that occurred in the past and will not be repeated in the future. The *Ex parte Young* exception does not apply where there is no ongoing violation of federal law, and Plaintiffs concede that the alleged violation here cannot and will not recur. See AC ¶¶ 107–09; MTD Br. 15. *Goldman I* never considered this issue. Indeed, it was not presented in *Goldman I* because the challenged election had not yet occurred at the time of this Court's sovereign immunity ruling. See MTD Br. 12–17. And apart from their erroneous assertion that Defendants' arguments fail under *Goldman I*, Plaintiffs offer no response to Defendants' argument that *Ex parte Young* is inapplicable here. Because the Department of Elections is an arm of the state and because Plaintiffs have failed to allege an ongoing violation of federal law sufficient to invoke *Ex parte Young*, all three Defendants are entitled to sovereign immunity.

II. Plaintiffs fail to state claims upon which relief can be granted

The motion to dismiss further demonstrated that the complaint fails to state claims upon which relief can be granted. Plaintiffs again do not respond to Defendants' arguments and rely on inapposite cases. As a threshold matter, Plaintiffs misstate the applicable standard of review under Rule 12(b)(6). The "any set of facts" standard that they cite, Opp. 2, has not been good law for more than a decade. *McCleary-Evans v. Maryland Dep't of Transp.*, 780 F.3d 582, 587 (4th Cir. 2015) (observing that the Supreme Court "retired the . . . no-set-of-facts test" in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 670 (2009)); *Woods v. City of Greensboro*, 855 F.3d 639, 647 (4th Cir. 2017). The standard is instead whether the complaint "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is

plausible on its face." *Rockville Cars, LLC v. City of Rockville*, 891 F.3d 141, 145 (4th Cir. 2018) (cleaned up). Plaintiffs do not meet that standard.

Rather than engage with Defendants' arguments on the merits of their equal-protection claim, see MTD Br. 18–24, Plaintiffs reproduce lengthy quotations from *Cosner v. Dalton*, 522 F. Supp. 350 (E.D. Va. 1981). See Opp. 6–7. But *Cosner* does not apply here for two reasons. First, *Cosner* is a 40-year-old district court opinion. A district court opinion is "not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case." *Booker v. South Carolina Dep't of Corr.*, 855 F.3d 533, 538 n.1 (4th Cir. 2017) (quoting *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011)). *Cosner* thus clearly does not "control[]" the Court here. Opp. 5.

Second, *Cosner* is inapposite. The question in *Cosner* was whether a new redistricting plan enacted by a state legislature violated the *Reynolds* principle of population equality based on the census data that the legislature used to draw the map. 522 F. Supp. at 354–55, 358. The other cases on which Plaintiffs rely arose in the same posture. See Opp. 6 (citing *Whitcomb v. Chavis*, 403 U.S. 124 (1971) (using 1960 Census data to test constitutionality of map drawn in 1965); *Swann v. Adams*, 385 U.S. 440 (1967) (similar); and *Kilgarlin v. Hill*, 386 U.S. 120 (1967) (similar). But Plaintiffs do not challenge Virginia's new maps drawn on the 2020 Census data. Their claim instead presents a different question: whether Virginia violated the Equal Protection Clause when it held its first-post census election on the basis of a pre-census map because new census data did not become available in time for the State to complete its redistricting prior to that first post-census election. See MTD Br. 2–7, 18–24. The Equal Protection Clause requires only that States "use 'the best population data available'" to "reapportion . . . in a timely fashion after having had an adequate opportunity to do so." MTD Br. at 19–20 (first quoting *Kirkpatrick v. Preisler*, 394 U.S.

526, 528 (1969), then quoting *Reynolds v. Sims*, 377 U.S. 533, 586 (1964)). Virginia received the 2020 Census data a mere 23 days before the 2021 general election began and 79 days after the primary election had concluded. See *Goldman II*, 2022 WL 2024745, at *3.[2] The "best population data available" were therefore the 2010 Census data because the 2020 Census data were not available in time for the 2021 election. As the overwhelming weight of authority makes clear, failing to conduct redistricting in time for an election that was already well underway when the census data arrived does not violate *Reynolds*'s requirement to conduct redistricting "in a timely fashion after having an adequate opportunity to do so." *Reynolds*, 377 U.S. at 596; see MTD Br.19–24 & n.11.

Plaintiffs nonetheless assert that the 2021 election violated the Constitution because "the 93.2% deviation of the current House of Delegates . . . is off the constitutional spectrum." Opp. 6. But this assertion is just a variation of the same error they commit by relying on *Cosner*. Plaintiffs

[2] Plaintiffs declare without argument or citation that Virginia should have "attempted redistricting under . . . American Community Survey [ACS] data." Opp. 9. The Court should reject this declaration out of hand. First, the Supreme Court has held that "because the census count represents 'the best population data available,' it is the only basis for good-faith attempts to achieve population equality." *Karcher v. Daggett*, 462 U.S. 725, 738 (1983) (quoting *Kirkpatrick*, 395 U.S. at 528)); see also *Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 334 (1999). Second, Plaintiffs' argument flies in the face of the well-established principle that States have no constitutional obligation to conduct mid-decade redistricting. See MTD Br. 21. If Plaintiffs were correct, States would have to use ACS data to conduct redistricting any time those data revealed substantial population shifts—even if those shifts occurred before the next decennial census. Indeed, under Plaintiffs' theory, the three-judge panel of this Court that redrew a quarter of Virginia's House of Delegates districts to remedy a racial gerrymander in 2019 erred by relying on 2010 Census data rather than 2019 ACS data. See *Bethune-Hill v. Virginia State Bd. of Elections*, 368 F. Supp. 3d 872, 889 (E.D. Va. 2019); see also Second Report of the Special Master at 34 n.23, *Bethune-Hill v. Virginia State Bd. of Elections*, No. 3:14cv852 (E.D. Va. Feb. 5, 2019) (ECF No. 360) ("[T]he 2010 Census still provides what is unquestionably the best information now available about Virginia's population demography, and is the appropriate data to use."). This is not the law; States may rely on the most recent Census to conduct redistricting at any point before new Census data become available and, if their original map was constitutionally sound, have no constitutional obligation to conduct redistricting before those data become available. See MTD Br. 21.

calculate this alleged "93.2% deviation" by comparing the districts used in the 2021 election to the 2020 Census data. See Opp. 3 (citing Stipulation of Facts ("SOF") ¶¶ 50–51 (ECF No. 21)). That is not the correct comparison, because the 2020 Census data's untimely arrival denied Virginia an "adequate opportunity" to complete its redistricting process prior to the 2021 election. *Reynolds*, 377 U.S. at 586. The relevant data for testing the constitutionality of the map used in 2021, therefore, are the data used to draw those maps—the 2010 Census data. The 2020 Census data have no more relevance to the constitutionality of the map used in the 2021 election than they have to the map used in the 2019 election. MTD Br. 20–24. Plaintiffs do not even try to explain why the 2020 Census data should control the equal-protection question.

In addition, Plaintiffs have abandoned their Voting Rights Act claim. In the motion to dismiss, Defendants explained that this claim fails both for lack of standing and on the merits. MTD Br. 24–28. Plaintiffs' only response is a single line in their conclusion asserting, without argument or support, that "Plaintiffs have properly pleaded their claim of . . . Voting Rights Act injuries." Opp. 12. Plaintiffs have therefore waived this claim, and it should be dismissed. See *Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue." (cleaned up) (quoting *Brown v. Nucor Corp.*, 785 F.3d 895, 923 (4th Cir. 2015))).

III. Laches and the *Purcell* principle bar Plaintiffs' claims

Finally, the motion to dismiss explained that Plaintiffs are not entitled to the highly disruptive injunctive relief they seek because they waited until the eleventh hour to file this lawsuit. MTD Br. 28–40. Plaintiffs again offer little response and fail to justify or even explain their protracted delay.

Plaintiffs do not dispute that they could have filed their suit a year earlier. See, *e.g.*, June 13, 2022 Hr'g Tr. 10 (ECF No. 13) (the Court noting that "you could have filed your lawsuit last year when Mr. Goldman did"). Instead, Plaintiffs repeatedly assert that they should have been permitted to intervene in *Goldman*. See, *e.g.*, Opp. 10–11. But, as Jeffrey Thomas himself acknowledged, Plaintiffs could have filed their own lawsuit at any time. Indeed, Jeffrey Thomas stated that he was ready to file his own lawsuit months before he did so. *Goldman* ECF No. 71 at 3–4 (Jeffrey Thomas's March 2022 Notice of Intent to File Separate Lawsuit explaining that he "could separately file the Complaint . . . today" but chose not to "because it will unnecessarily cost him time and money to file a separate suit"); *Goldman* ECF No. 45-3 (complaint Jeffrey Thomas attached to his motion to intervene in October 2021). And it has been clear for at least several months that *Goldman* suffered from severe jurisdictional deficiencies that were likely to prevent the suit from proceeding. See *Goldman* ECF No. 43 at 4:9–11, 7:18–20, 14:7–15:2. Plaintiffs' deliberate decision not to file suit until fewer than four months before the disruptive special election they seek is a quintessential lack of diligence and is highly prejudicial to Defendants. Laches therefore bars their claims. See *White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990) (explaining that laches applies when a party shows "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense" (quoting *Costello v. United States*, 365 U.S. 265, 282 (1961))).

The relief Plaintiffs request is also barred under the *Purcell* doctrine, pursuant to which "federal courts ordinarily should not alter state election laws in the period close to an election." *Democratic Nat'l Comm. v. Wisconsin State Legis.*, 141 S. Ct. 28, 30 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). Plaintiffs assert that "Defendants are able to conduct special elections in these

district lines in less than one month," Opp. 5, based on their allegations that a special election was held to fill a single House of Delegates seat less than a month after a "writ of election" was issued, AC ¶¶ 90–99. But there is plainly no comparison between the burden and complexity of organizing a special election for a single seat pursuant to existing state statutes enacted by the people's representatives, and an order of a federal court compelling a State to organize elections for the *entire* House of Delegates, which would require 100 special elections to be held across the Commonwealth on an unprecedently short timeline. See *Democratic Nat'l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring) ("It is one thing for state legislatures to alter their own election rules in the late innings and to bear the responsibility for any unintended consequences. It is quite another thing for a federal district court to swoop in and alter carefully considered and democratically enacted state election rules when an election is imminent."). Plaintiffs make no attempt to demonstrate otherwise.

In any event, the *Purcell* principle does not turn on whether it is hypothetically possible for a State to comply with a federal injunction. It turns instead on whether federal judicial intervention into a looming State election, with its concomitant risk of voter confusion, administrator confusion, chaos, and "incentive to remain away from the polls," *Purcell*, 549 U.S. at 5, is consistent with "the State's interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election," *Democratic Nat'l Comm.*, 141 S. Ct. at 31 (Kavanaugh, J., concurring). That is why the Supreme Court has recently stayed district court preliminary injunctions ordering States to redraw legislative districts when the *primary* elections were still months away. See *Merrill v. Milligan*, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring in grant of application for stays) (imposing stay two months before primary elections); *Ardoin v. Robinson*, --- S. Ct. ---, 2022 WL 2312680 (June 28, 2022)

(imposing stay five months before primary election after lower court expressly refused to do so on *Purcell* grounds); see also *Moore v. Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in denial of application for stay).

Here, the 2022 electoral process began months ago, and statewide primary elections have already taken place. SOF ¶ 41. Absentee voting for the November 2022 general election must begin no later than September 24, 2022. See 52 U.S.C. § 20302; Va. Code § 24.2-612. Election Day itself is fewer than four months away. SOF ¶ 38. The 2022 Virginia electoral process is therefore well within the *Purcell* window. Granting Plaintiffs the relief they seek—dissolving the House of Delegates and ordering new, statewide elections to take place in under four months—is far more intrusive than the sorts of judicial interventions the Supreme Court has recently blocked under *Purcell*. Given Virginia's "compelling interest in preserving the integrity of its election process," the relief Plaintiffs request should be denied. *Purcell*, 549 U.S. at 4 (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 231 (1989)).[3]

Plaintiffs argue that this Court should refuse to apply laches or the *Purcell* principle under the "unclean hands" doctrine. But as the motion to dismiss explained, because the *Purcell* principle is not grounded solely in traditional equitable principles and instead derives from the Constitution, see *Hutchinson v. Miller*, 797 F.2d 1279, 1280 (4th Cir. 1986); *Thompson v. Dewine*, 959 F.3d 804, 812 (6th Cir. 2020), the unclean-hands doctrine does not apply, see MTD Br. 39. The unclean-hands doctrine is also inapplicable because Defendants are not the party who "seeks to set the

[3] Indeed, the district court in *Cosner* denied precisely the relief Plaintiffs seek here—federal judicial intervention in a looming election—for the very reasons underlying the *Purcell* principle. The plaintiffs in *Cosner* asked the district court to impose a remedial redistricting plan in August 1981 to govern the upcoming primaries in September and the general elections in November. 522 F. Supp. at 363. The court refused, reasoning that such a dramatic intervention was inappropriate "when, as here, necessary election machinery is already in progress for an election rapidly approaching." *Id.* at 364.

judicial machinery in motion." MTD Br. 36–37 (quoting 1 John Norton Pomeroy, Treatise on Equity Jurisprudence § 397, at 433 (1881)). Plaintiffs fail to respond to these points.

Even if the unclean hands doctrine could apply to the laches defense, Defendants' hands are clean. The Court should reject Plaintiffs' attempts to shift the blame for their own delay onto Defendants. Plaintiffs assert that "the delay in these proceedings is undoubtedly the fault of Defendants and their various counsel," Opp. 10, but they do not—and cannot—explain how Defendants' litigation of *Goldman* prevented Plaintiffs from filing their own separate suit earlier. See *Goldman* ECF No. 71 at 3. Nor do they identify a single decision made by Defendants in the *Goldman* litigation that was unjust, unfair, or unlawful. Plaintiffs' decision to sit on their own hands for months does not render Defendants' hands unclean.[4]

Finally, as explained in the motion to dismiss, the *Goldman* defendants—who largely do not overlap with Defendants here—did not engage in "stall tactics," and acted lawfully when exercising their statutory right to an interlocutory appeal. See *South Carolina Wildlife Fed. v. Limehouse*, 549 F.3d 324, 327 n.1 (4th Cir. 2008). Defendants noticed their appeal swiftly in response to this Court's order that they appeal within six days. See *Goldman* ECF No. 41. Defendants took a statutorily authorized appeal on the Court's expedited timeframe, met every Court-ordered deadline, and litigated in good faith. That conduct cannot make for unclean hands.

[4] Plaintiffs continue to accuse Defendants of "stall tactics" to delay this litigation, Opp. 12, but Plaintiffs have delayed this litigation at every opportunity. They disrupted the expedited briefing schedule they requested by filing an amended complaint with new claims and parties just one day before joint stipulations were due. Then, notwithstanding that Jeffrey Thomas originally asked this Court for only twenty-four hours to respond to Defendants' motion to dismiss, see Proposed Scheduling Order (ECF No. 3), Plaintiffs filed their opposition brief two days after the court-ordered deadline, see Order Extending Briefing Deadlines (ECF No. 16) (setting 8-day deadline for opposition, which expired on Saturday, July 9); Pls.' Opp. to Defs.' Mot. to Dismiss (ECF No. 26) (opposition brief filed Monday, July 11); see also June 13, 2022 Hr'g Tr. 11:15–12:10 (ECF No. 13) (setting Jeffrey Thomas's deadline to respond under the original briefing schedule for a Saturday notwithstanding Federal Rule of Civil Procedure 6(a)).

CONCLUSION

For the foregoing reasons, this Court should dismiss Plaintiffs' claims.

Dated: July 15, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on July 15, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. A true copy was also sent, via email pursuant to an agreement between the parties, to:

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