UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

CLEVE DUNN, JR., ET AL. **Plaintiffs,**	**CIVIL ACTION NO 3:24-cv-00521**
	HONORABLE SHELLY D. DICK, CHIEF JUDGE
v.	
EAST BATON ROUGE PARISH, ET AL., **Defendants**	**HONORABLE ERIN WILDER-DOOMES, MAGISTRATE JUDGE**

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

NOW INTO COURT, through undersigned counsel, comes Doug Welborn, in his capacity as the Clerk of Court for East Baton Rouge Parish ("Welborn"), who hereby submits this memorandum in support of his Motion to Dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. For the reasons more fully outlined below, the *Complaint* filed by Plaintiffs should be dismissed with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

I. INTRODUCTION

Following the decennial census of 2020, the Baton Rouge Metropolitan Council ("Metro Council") passed Ordinance 18596 (the "Ordinance") on August 10, 2022, thereby reapportioning and redistricting East Baton Rouge Parish's metropolitan council election districts. The new map consisting of these districts will become effective on January 1, 2025. Several of the Metro Council members, joined by other East Baton Rouge Parish citizens, have brought the present lawsuit to contest the newly-formed districts under the new map based upon alleged violations of Section 2 of the Voting Rights Act and the 14th and 15 Amendments of the U.S. Constitution.

Plaintiffs' lawsuit has named the following Defendants: 1) East Baton Rouge Parish, the City of Baton Rouge, and the Metro Council; 2) Welborn, the Clerk of Court for East Baton Rouge Parish; 3) Steve Raborn, the Registrar of Voters for East Baton Rouge Parish ("EBR ROV");[1] 4) the East Baton Rouge Parish Board of Election Supervisors; and 5) Nancy Landry, Secretary of State for Louisiana[2]. With respect to the map composed of the newly-formed districts that is to take effect per the Ordinance on January 1, 2025, Plaintiffs have alleged that "Defendants approved this map so as to dilute the votes of Black voters and thereby treat voters unequally under its laws."[3]

On that basis, Plaintiffs seek declaratory relief finding that "the 2025 Metro Council map violates Section 2 of the Voting Rights Act and the United States Constitution."[4] Plaintiffs also seek a preliminary and permanent injunction "enjoining Defendants from enforcing or giving any effect to the boundaries of the 2025 Metro Council map as adopted by the Metro Council in 2022, including barring Defendant (sic) from conducting elections in accordance with that plan"[5] and ordering "the adoption of a valid Metro Council redistricting plan for Baton Rouge that includes six districts in which Black voters have an opportunity to elect candidates of their choice."[6] Plaintiffs also seek "costs, expenses, and disbursements, and reasonable attorneys' fees incurred in bring[ing] this" action.[7] Interestingly, Plaintiffs did not file a separate motion for injunctive relief to prevent the November 5, 2024 elections from going forward even though they are based upon the 2025 Metro Council map.

[1] Plaintiffs have since voluntarily dismissed EBR ROV Steve Raborn from their lawsuit.
[2] It bears noting that Plaintiffs allege that candidates for the Metro Council qualify before the Secretary of State. However, according to RS 18:462(B), candidates for the Metro Council qualify before the Clerk of Court. The fact that Metro Council candidates qualify before the Clerk of Court has nothing to do with the redistricting process or the map that is being challenged in this proceeding. This is just one of many ministerial duties that the Clerk of Court is required to perform under law, as discussed further below.
[3] Rec. Doc. 1:41, ¶187.
[4] Rec. Doc. 1:41, Prayer for Relief, ¶A.
[5] Rec. Doc. 1:41-42, Prayer for Relief, ¶B.
[6] Rec. Doc. 1:42, Prayer for Relief, ¶C.
[7] Rec. Doc. 1:42, Prayer for Relief, ¶D.

At the outset, it should be noted that Welborn is named only *once* in Plaintiffs' 42-page Complaint (*i.e.*, Paragraph 18 "Defendant Doug Welborn is the Clerk of Court for East Baton Rouge Parish. 'The clerk of court is the chief election officer of the parish.' La. R.S. §18:422."[8]). The only other reference to Welborn at all within the Complaint merely notes the fact he is white.[9] Significantly, irrespective of the soundness of Plaintiffs' legal challenge concerning the 2025 Metro Council map, there are simply no well-pled factual allegations that set forth any responsibility or liability on the part of Welborn concerning the Metro Council's redistricting plan. Welborn is not alleged to have had any role in drafting, reviewing, or approving[10] the 2025 Metro Council map that is at the crux of Plaintiffs' lawsuit.

Moreover, Welborn is a ministerial officer who has no discretion but is compelled to carry out his official duties in the election process as mandated by Louisiana's statutes. A review of Louisiana Revised Statutes 18:532, 18:532.1, and 18:1922 clearly shows that Welborn has little to no role in redistricting, as opposed to the local governing authority (Metro Council) who passed the map, and even less so than other current and former Defendants (the EBR ROV), which have perceptibly more prominent roles in the redistricting process.[11] As such, Welborn should be dismissed under Fed. R. Civ. P. 12(b)(6) due to Plaintiffs' failure to state a claim as to Welborn upon which relief can be granted. Welborn additionally notes that, because Plaintiffs lack standing to bring their Section 2, Voting Rights Act Claims, he should also be dismissed from those claims pursuant to Fed. R. Civ. P. 12(b)(1).

[8] Rec. Doc. 1:3, ¶18.
[9] Rec. Doc. 1:35 at ¶149.
[10] While Plaintiffs do make a general allegation in Paragraph 187 that "Defendants approved this map," that statement cannot be reasonably construed to include Welborn based on a review of Louisiana's statutory scheme relating to redistricting, which clearly confers upon the Clerk of Court no such role in the redistricting approval process.
[11] *See* La. R.S. 18:532 and 18:532.1

II. LAW AND ARGUMENT

A. Fed. R. Civ. P. 12(b)(1) Motion to Dismiss because Plaintiffs Lack Standing on their Section 2, Voting Rights Act Claims

In addition to their constitutional claims, Plaintiffs argue that the 2025 Metro Council map violates Section 2 of the Voting Rights Act because it dilutes Black votes. In response, Welborn adopts by reference, as if copied herein *in extenso*, the arguments raised by Defendant, Metro Council, contending that Plaintiffs lack standing to bring their claims under Section 2 of the Voting Rights Act, as set forth in its memorandum in support of motion to dismiss. *See* Rec. Doc. 18-1:8-21.

Plaintiffs also request an injunction enjoining Defendants from enforcing or giving any effect to the boundaries of the 2025 Metro Council map as adopted by the Metro Council in 2022, including barring Defendant (sic) from conducting elections in accordance with that plan"[12] "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, at 20, 129 S. Ct. 365, at 374, 172 L. Ed. 2d 249 (2008). The Supreme Court has stated that the "standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction. *Id*., 555 U.S. at 22, citing *Los Angeles v. Lyons*, 461 U.S. 95, 103, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983); *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 441, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974); *O'Shea v. Littleton*, 414 U.S. 488, 502, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974). Here, Plaintiffs allege Black voter dilution due to the challenged Ordinance; however, they do not tie the alleged voter dilution to an upcoming election (i.e., when the irreparable injury may be said to occur). Thus, Plaintiffs have failed to

[12] Rec. Doc. 1:41-42, Prayer for Relief, ¶B.

plead any irreparable harm that will occur unless an injunction issues.

"Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right. Article III standing requires a **concrete injury** even in the context of a statutory violation." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016). (Emphasis added.) While Plaintiffs contend Defendants have violated Section 2 of the Voting Rights Act by promulgating the challenged map, that is not sufficient to show an injury. Plaintiffs have failed to allege a concrete injury for purposes of seeking injunctive relief since they fail to plead an upcoming election based upon the map which will necessarily dilute their vote unless an injunction is issued. As was noted by the Supreme Court earlier this year in *Murthy v. Missouri*, 144 S. Ct. 1972, 219 L. Ed. 2d 604 (2024), "plaintiffs 'cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.' *Id*., 144 S. Ct. at 1977, *citing Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416, 133 S. Ct. 1138, 1151, 185 L. Ed. 2d 264 (2013).

Further undermining Plaintiffs' claim is that fact the 2024 election that just occurred on November 5, 2024, was based upon the very same map that Plaintiffs challenge in this action. Any injunction based upon that election is now moot. Meanwhile, they have not identified any future election that must be enjoined so as to prevent irreparable harm based upon this map. Plaintiffs' failure to plead a concrete injury based upon the challenged map completely undermines their request for injunctive relief. Accordingly, because Plaintiffs' Compliant demonstrates a lack of Article III standing to bring their request for injunctive relief, those claims should be dismissed due to lack of subject matter jurisdiction.

B. Fed. R. Civ. P. 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief can be Granted

Rule 12(b)(6) of the Federal Rule of Civil Procedure permits the Court to dismiss a complaint when a plaintiff has not stated a cause of action. Plaintiffs' claims against Welborn must be dismissed because Plaintiffs have failed to state a single claim upon which relief can be granted as it relates to Welborn.

To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570; 127 S.Ct. 1955, 1974; 167 L.Ed.2d 929 (2007). When reviewing a motion to dismiss, the court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007); *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996); *Benton v. U.S.*, 960 F.2d 19, 21 (5th Cir. 1992); *Leffall v. Dallas Indep. School Dist.*, 28 F.3d 521, 524 (5th Cir. 1994). As to Welborn, none have been pled and, therefore, he must be dismissed.

The Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 678; 129 S.Ct. 1937, 1949; 173 L.Ed.2d 868 (2009), further clarified the plausibility pleading standard announced in Federal Rule of Civil Procedure 8(a)(2), explaining that Rule 8 "does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (citing *Twombly*, 550 U.S. 544, 570; 127 S.Ct. 1955; 167 L.Ed.2d 929). Rather, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (citing *Twombly*, 550 U.S. at 570). The plausibility standard "asks for more than a sheer possibility that a defendant acted unlawfully." *Id.* (citing Twombly, 550 U.S. at 556). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not 'show[n]'– 'that

the pleader is entitled to relief.'" *Id.* (citing Fed. Rule Civ. Proc. 8(a)(2)).

In *Sumrall v. Ricoh USA, Inc.*, CIV.A. 15-00061, 2015 WL 4644328, at *2 (M.D. La. Aug. 4, 2015), the United States District Court for the Middle District of Louisiana relied on the Fifth Circuit's interpretation of Rule 8(a) of the Federal Rules of Civil Procedure. Reproducing the Fifth Circuit's explanation, the Middle District in *Sumrall* held:

> The complaint (1) on its face (2) must contain enough factual matter (taken as true) (3) to raise a reasonable hope or expectation (4) that discovery will reveal relevant evidence of each element of a claim. "Asking for [such] plausible grounds to infer [the element of a claim] *does not impose a probability requirement* at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal [that the elements of the claim existed]'.

Id. (citing *Lormand v. U.S. Unwired, Inc.*, 565 F.3d 228, 257 (5th Cir. 2009)(emphasis in original).

In *Sumrall*, the Middle District—quoting *Diamond Servs. Corp. v. Oceanografia, S.A. De C.V.*, No. 10-00177, 2011 WL 938785, at *3 (W.D. La. Feb. 9, 2011)—further held:

> Therefore, while the court is not to give the "assumption of truth" to conclusions, factual allegations remain so entitled. Once those factual allegations are identified, drawing on the court's judicial experience and common sense, the analysis is whether those facts, which need not be detailed or specific, allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." [*Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009)]; *Twombly*, 555 U.S. at 556. This analysis is not substantively different from that set forth in *Lormand, supra*, nor does this jurisprudence foreclose the option that discovery must be undertaken in order to raise relevant information to support an element of the claim. **The standard, under the specific language of Fed. R. Civ. P. 8(a)(2), remains that the defendant be given adequate notice of the claim and the grounds upon which it is based.** The standard is met by the "reasonable inference" the court must make that, with or without discovery, the facts set forth a plausible claim for relief under a particular theory of law provided that there is a "reasonable expectation" that "discovery will reveal relevant evidence of each element of the claim." *Lormand*, 565 F.3d at 257; *Twombly*, 555 U.S. at 556.

Id. at *3. (emphasis added).

Within the instant Complaint there are *no* well-pled allegations asserting that Welborn played any role whatsoever in drawing maps or setting district boundaries, nor did he play any role in adopting the new districts that are being challenged herein. Rather, Plaintiffs' Complaint admits

the Ordinance was passed by the Metro Council.[13] Indeed, nowhere are facts alleged to describe how Welborn has any legal duty or responsibility involving the redistricting process. Plaintiffs only mention Welborn *once* by name in the allegations of their lawsuit[14] and *never* do they make any allegations of specific conduct by him. This Court has previously condemned the use of these types of "Shotgun Pleadings" in *O'Neal v. Universal Prot. Serv., LLC*, No. CV 21-00737-BAJ-SDJ, 2022 WL 1631970 (M.D. La. May 23, 2022), noting, " the fourth type of shotgun pleading ... is a complaint which includes multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Id.*, citing *Weiland v. Palm Beach Cty. Sheriff's Off.*, 792 F.3d 1313, 1322–23 (11th Cir. 2015) (emphasis added). "The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests." *Id.* This Court's keen admonishment condemning the use of such deficient pleadings is appropriately applied here where no attempt has been made by Plaintiffs to explain how Welborn has specifically acted to violate their rights or any laws.

In addition to not setting forth sufficient facts detailing their injury caused by Welborn, Plaintiffs also fail to cite any statute or other law to explain why Welborn has been named as a defendant in their lawsuit. He is simply lumped in with the other Defendants without setting forth any notice of what specific acts or omissions he is called upon to defend. It is not even clear whether Plaintiffs name Welborn as a Defendant merely by virtue of his limited duties involving the election process or due to a specific error or omission with respect to the 2025 Metro Council

[13] *See* Rec Doc. 1:41, ¶185 ("But the white Metro Council has passed a map that would place nearly 60% of the Metro Council seats in white-majority districts.").
[14] Rec. Doc. 1:3, ¶18.

map. In either event, Welborn has very specific ministerial duties respecting elections with no discretion to vary from his role but absolutely no responsibility for redistricting. As discussed below, Welborn's purely ministerial duties are an insufficient basis to make him liable in this action.

1. Ministerial Duties

The office of the Clerk of Court is established in Louisiana's Constitution which also assigns the general duties and responsibilities thereof. Pursuant to La. Const. art. 5, § 28, the Clerk of Court "shall be ex officio notary public and parish recorder of conveyances, mortgages, and other acts and shall have other duties and powers provided by law." With respect to elections, the law designates the Clerk of Court as "the chief election officer of the parish." *See* La. R.S. 18:422. In that capacity, the Clerk of Court serves as a functionary in the election process and is authorized to perform only those specific duties relating to elections that are set forth in Title 18 of Louisiana's Revised Statutes. For example, the Clerk of Court has specific duties regarding the training of commissioners and commissioners-in-charge (La. R.S. 18:431-431.1, 433-434), the handling of election returns (La. R.S. 18:571-572, 574, 576), and additional responsibilities as parish custodian of voting machines (La. R.S. 18:1354). Welborn's duties are limited to *election day* activities, including submitting returns to the Secretary of State to count and tabulate. Welborn does not draw district maps, has no role in the census data collection process, and Welborn does not have the ability to enforce election laws. Furthermore, Welborn does not register new voters or update voter registration. Welborn does not create precinct boundaries or choose polling locations.

With regard to the drawing of election districts, state law has not assigned Welborn any responsibility whatsoever. Indeed, there is only a brief reference to the Clerk of Court in the statutes that relate to redistricting noting that he is merely tasked with *receiving* certified copies of

the ordinances related to maps and boundaries, drawn and adopted by the governing authority. *See* La. R.S. 18:532.1(D)(1)(b)(i) and (F). That simple function does not make Welborn somehow complicit in promulgating the map that Plaintiffs contend violates the Voting Rights Act and their constitutional rights. Indeed, "the act of filing papers with the court is as ministerial and inflexibly mandatory as any of the clerk's responsibilities." *McCray v. State of Md.*, 456 F.2d 1, 4 (4th Cir. 1972). Under Louisiana law, '[m]inisterial duties are duties in which no element of discretion is left to the public officer. A ministerial duty is a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law'." *Hoag v. State*, 2004-0857 (La. 12/1/04); 889 So. 2d 1019, 1024 (citations omitted). As well, "[a] public officer charged by statute with the obligation and responsibility of performing ministerial duties is without right or interest to assert the unconstitutionality of the statute as a defense to an action to compel the performance of such duties." *Smith v. Flournoy*, 117 So. 2d 320, 322 (La. Ct. App. 1959).

The fact that Welborn performs limited and specific ministerial duties in the election process should not make him a party to litigation. In *Calloway v. Miller*, 147 F.3d 778 (8th Cir. 1998), the former City Recorder for Crawfordsville, Arkansas sued the County Clerk and Board of Election Commissioners due to the conduct of an election for her former position, the term of office for which (either two years or four years) depended upon the population of the city. Once the Secretary of State determined that the city had grown to a 2nd Class City (requiring a 4-year term of office), the governing body for the city should have altered its elections procedure from a two-year election cycle to account for the change in population, but it never did so. When the Plaintiff subsequently withdrew her petition for re-election due to her understanding of what the term of office should be, someone else was elected in her place. The Eighth Circuit examined

whether the County Clerk and Board of Election Commissioners could be liable to Plaintiff under § 1983, finding that liability did not attach due to their ministerial function:

> "**The defendants' function in the election process is merely ministerial**. The plaintiff points to nothing and we find nothing under Arkansas law which establishes any authority or responsibility for the defendants to perfect, control, or alter the City's election process regardless of the City's classification. **The defendants do not have discretionary authority to conduct an election.** The Board of Election Commissioners does not have the authority to declare a candidate ineligible and remove the candidate's name from the ballot when there is a dispute concerning the facts or the law. *State v. Craighead County Board of Election Commissioners*, 300 Ark. 405, 409, 779 S.W.2d 169, 171 (1989). Likewise, **there is no such authority under Arkansas law granted to a County Clerk**." *Id.*, 147 F.3d 778, 781 (8th Cir. 1998). (Emphasis added.)

Just as noted by the Eighth Circuit in *Calloway*, Welborn's role with regard to the election process for East Baton Rouge Parish is merely ministerial. He has no discretion to vary from the strict role assigned by state law, including (as here) when there is a dispute as to the map redrawing the districts. *See, Ryan v. State Bd. of Elections of State of Ill.*, 661 F.2d 1130, 1134 (7th Cir. 1981) (noting that, in a suit alleging the unconstitutionality of the present Illinois congressional districts, the County Clerk's "duties are confined to [the] [c]ounty and are purely ministerial.") *See also, One Wisconsin Inst., Inc. v. Nichol*, 310 F.R.D. 394, 398 (W.D. Wis. 2015) (with regard to a motion to intervene as of right, finding county and municipal clerks' duties and powers respecting elections were "largely ministerial" and were therefore not "sufficiently discretionary to rise to the level of legally protected interests for purposes of Rule 24(a).").

Welborn is even further removed from the election process than the EBR ROV who was previously dismissed from this lawsuit. The EBR ROV is solely responsible for the registration of voters in East Baton Rouge Parish and for the administration and enforcement of the laws and the rules and regulations of the Secretary of State relating to the registration of voters. La. RS 18:58. The EBR ROV is required by statute to participate in the state voter registration computer system

and to provide all necessary assistance to the Secretary of State to effectuate the inclusion of his parish in that system. *Id.* In addition, the EBR ROV is responsible for conducting absentee voting by mail and early voting in East Baton Rouge Parish and assigns East Baton Rouge Parish voters in the state voter registration computer system according to each voting district in the parish from which an election is to be conducted. *Id.*

Moreover, the Secretary of State is the State's chief election officer. La. Const. art. 4, § 7; La. R.S. 18:421. In that capacity, she is the State's sole official responsible for preparing and certifying the ballots for all elections (including elections of the Metro Council), preparing the voting machines, promulgating all election returns, and administering/enforcing the election laws. *Id.* Although the Clerk of Court is the chief election officer for the parish, the law grants him no authority to prepare the ballots, to prepare voting machines, to promulgate election returns, or to administer/enforce election laws. Therefore, even should this Court agree that no future elections should go forward using the 2025 Metro Council map, it is not necessary to enjoin the Clerk of Court inasmuch as that parish official cannot independently conduct any elections.

Here, other Defendants and the EBR ROV's statutory duties are more directly connected with the alleged constitutional violation relating to the map. Welborn is not empowered to create council districts, to establish election methods or to enforce laws that do. If the formation of council districts or the establishment of election methods have the effect of diluting Black voting strength for elections to the Metro Council, the injury is not fairly traceable to Welborn as a matter of law or as a matter of fact. Welborn had no hand in creating the districts nor can he deviate from duties assigned to him by law.

Finally, Welborn adopts by reference, as if copied herein *in extenso*, the arguments raised by Defendant, Metro Council, contending that Plaintiffs' Complaint fails to raise a claim upon

which relief can be granted, as set forth in its memorandum in support of motion to dismiss. *See* Rec. Doc. 18-1:21-24.

2. Preliminary and Permanent Injunction

Plaintiffs seek a preliminary and permanent injunction of the 2025 Metro Council map as adopted by the Metro Council in 2022 because the 2025 Metro Council map fails to include six districts in which Black voters have an opportunity to elect candidates of their choice.[15] For the reasons stated herein, Plaintiffs have not properly pled a request for an injunction. Moreover, as Plaintiffs have not met their burden of demonstrating that the 2025 Metro Council map should be enjoined, their request for an injunction should therefore be denied. Although Plaintiffs filed the instant action on June 26, 2024, in which they seek declaratory, injunctive, and compensatory relief, Plaintiffs failed to properly seek injunctive relief by filing a separate motion as required under Local Civil Rule 65. Therefore, having not raised their request for a preliminary injunction in a document separate from the Complaint, that request may not be considered by the Court.[16] It should be noted that Welborn was not served until September 24, 2024, and as of this filing, Plaintiffs have still not properly sought an injunction.

Local Civil Rule 65 provides:

> An application or a motion for a temporary restraining order or for a preliminary injunction **shall be made in a document separate from the complaint and if not, may not be considered by the Court.** An application for a temporary restraining order shall be accompanied by a certificate of the applicant's attorney, or by an affidavit, or by other proof satisfactory to the Court, stating (1) that actual notice of the time of making the application, and copies of all pleadings and other papers filed in the action to date or to be presented to the Court at the hearing, have been furnished to the adverse party's attorney, if known, otherwise to the adverse party; or (2) the efforts made by the applicant to give such notice and furnish such copies.

(emphasis added).

[15] Rec. Doc. No. 1, Prayer for Relief
[16] Local Civil Rule 65

In *Cannon v. S. Univ. Bd. of Supervisors*, CV 17-527-SDD-RLB, 2018 WL 1881250, at *1 (M.D. La. Apr. 19, 2018), Plaintiff included in his "Prayer for Relief" a request that the Court enter a preliminary injunction enjoining the Defendants from violating his constitutional rights. *Id*. at *3. This Court denied the request for two reasons. First, the Plaintiff failed to comply with Local Civil Rule 65, which provides that an application for a preliminary injunction "shall be made in a document separate from the complaint and if not, may not be considered by the Court." *Id*. Second, the Plaintiff failed to satisfy the "substantive criteria for a preliminary injunction." *Id*. This Court provided, in pertinent part:

> A preliminary injunction is an "extraordinary and drastic remedy" that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. A plaintiff seeking a preliminary injunction must establish (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not granted; (3) that their substantial injury outweighs the threatened harm to the party whom they seek to enjoin; and (4) that granting the preliminary injunction will not disserve the public interest.

(footnotes omitted). Furthermore, while the Plaintiff did allege in his First Amended Complaint that he suffered irreparable harm, his pleadings were "otherwise devoid of any reference to, or discussion of, the other factors." *Id*. Therefore, this Court held that any "ostensible motion for a preliminary injunction couched in Plaintiff's prayer for relief" was denied. *Id*.

Similarly, in *Nguyen v. Louisiana State Bd. of Cosmetology*, CIV.A. 14-00080-BAJ, 2015 WL 590006, at *1, n. 3, (M.D. La. Feb. 11, 2015), Plaintiffs requested preliminary injunctions but never filed applications for preliminary injunctions separate from the Complaint, as required by the Court's Local Rules. Therefore, the Court would not consider Plaintiffs' requests for preliminary injunctions as they were not properly before the Court. *Id*.

Plaintiffs do not meet the high burden for an injunction to issue. The burden is on Plaintiffs to establish the following elements for a preliminary injunction to issue:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Janvey v. Alguire, 647 585, 595 (5th Cir. 2011) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009). Furthermore, given that "[a] preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has 'clearly carried the burden of persuasion' on all four requirements." *Western Surety Co. v. PASI of LA, Inc.*, 334 F. Supp. 3d 764, 789 (M.D. La. 2018); *see also Bluefield Water Ass'n, Inc. v. City of Starkville,* 577 F.3d 250, 253 (5th Cir. 2009) ("We have cautioned repeatedly that a preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has 'clearly carried the burden of persuasion' on all four requirements.").

"The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Preliminary injunctions "favor the status quo and seek to maintain things in their initial condition so far as possible until after a full hearing permits final relief to be fashioned." *Wenner v. Tex. Lottery Comm'n*, 123 F.3d 321, 326 (5th Cir. 1997).

As shown in greater detail below, Plaintiffs undoubtedly cannot carry their burden of persuasion on all four elements as it relates to Welborn. Plaintiffs cannot show a likelihood of success on the merits, nor can they show that the injunction will not disserve the public interest, or that the harm of the injunction does not outweigh the threatened injury. More importantly, as it relates to Welborn, Plaintiffs have not sufficiently plead that they will suffer irreparable harm. Because Plaintiffs have not made the requisite clear showing that they are entitled to preliminary relief, their request for a preliminary injunction should be denied.

Isolating the second prong of the injunctive relief analysis, Plaintiffs have failed to plead a likelihood of irreparable injury. No injunction can issue under Federal Rule of Civil Procedure 65 unless the asserted irreparable injury is "actual and imminent," not merely remote or speculative. *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). "There must be a likelihood that irreparable harm will occur. Speculative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *Morrell v. City of Shreveport*, 536 Fed. Appx. 433, 435 (5th Cir.2013)(citing *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir.2001)). "Thus, '[a] presently existing actual threat must be shown.'" *Id*. Moreover, as this Court has stated, "'Irreparable harm requires a showing that: (1) the harm to Plaintiff[ ] is imminent (2) the injury would be irreparable and (3) that Plaintiff[ ] ha[s] no other adequate legal remedy.'" *Robertson v. Louisiana Bd. of Pardons*, CV 23-1494-SDD-RLB, 2023 WL 7412928, at *12 (M.D. La. Nov. 9, 2023)(citing *J.H. by and through N.H. v. Edwards*, 2020 WL 3448087 at *44 (quoting *Gonannies, Inc. v. Goupair.Com, Inc.*, 464 F. Supp. 2d 603, 608 (N.D. Tex. 2006))).

In this case, Plaintiffs have failed to allege how they are currently suffering or will prospectively suffer irreparable harm absent an injunction. Specifically, there is no irreparable harm with respect to Welborn because in his ministerial role, he plays no role in the redistricting process and because Plaintiffs also fail to identify what election they seek to enjoin, thereby not showing what injury will occur. As such, Plaintiffs have not shown that absent injunctive relief, they are substantially likely to suffer irreparable harm.

Plaintiffs have not identified what election they seek to enjoin. The Complaint is completely void of any facts identifying an election that will cause injury under the current map. Moreover, they cannot trace a particular election to the perceived injury. Additionally, as noted above, an election was held on November 5, 2024 under the 2025 map; therefore, any conceivable

injury Plaintiffs may have sought to prevent through an injunction has already occurred. Plaintiffs fail to identify an irreparable injury that will occur if an injunction is not issued, especially a harm that may be caused by Welborn. Nowhere in the Complaint do Plaintiffs allege that Welborn's action or inaction will cause an injury. Furthermore, Plaintiffs have not declared what Welborn's role is in the redistricting process and Plaintiffs have not stated what harm Welborn has or will cause. Because Welborn does not play a role in the redistricting process, an irreparable injury cannot be attached to Welborn.

Further highlighting the lack of any imminent, irreparable injury to Plaintiffs is the considerable delay between the Ordinance's passage into law and the filing of Plaintiffs' Complaint. If there was truly an imminent injury to Plaintiffs, then they should have filed their lawsuit long before the 2024 fall elections. As of the filing of this motion, elections have already taken place under the contested map. Plaintiffs have not alleged any future elections based upon the contested map that must be enjoined. Essentially, Plaintiffs are asking this Court to enjoin any election based upon the challenged map but without identifying a particular election and while standing by as the 2024 elections went forward based upon the offensive map. The next elections based upon this map may not be until four years from now in 2028, and that interval is plainly too far away for that to be considered imminent, irreparable injury for purposes of Plaintiffs' request for an injunction.

In sum, there is no actual, imminent injury traceable to Welborn (or any other Defendant). Therefore, Court should not grant injunctive relief.

3. Discriminatory Intent

Plaintiffs have failed state a claim as it relates to Welborn under the Fourteenth and Fifteenth Amendedments to the United States Constitution. The Complaint does not contain any

allegation that Welborn had any discriminatory intent related to the Ordinance, nor could it because Welborn has no role in the redistricting process. Welborn did not single "out a particular group for disparate treatment." *Hooker v. Campbell*, 2018 U.S. Dist. LEXIS 64082, at *19 (W.D. La. Apr. 16, 2018) ("Discriminatory intent means 'that the decision maker singled out a particular group for disparate treatment and selected his course of action at least in part for the purpose of causing its adverse effect on an identifiable group.'"), *quoting Fennell v. Marion Independent School Dist.*, 804 F.3d. 398, 412 (5th Cir. 2005). To prevail on either their Fourteenth or Fifteenth Amendment claims, Plaintiffs must show that the voting scheme has a discriminatory effect and was enacted with a discriminatory purpose. *Backus v. South Carolina*, 857 F. Supp. 2d 567 (D.S.C. 2012), aff'd, ___ U.S. ___, 133 S. Ct. 156 (2012); *Terrebonne Parish NAACP v. Jindal*, No. CIV.A. 14-069-JJB, 2014 WL 3586549, at *7 (M.D. La. July 21, 2014); *Chisom v. Roemer*, 501 U.S. 380, 403–04 (1991) (explaining that *Mobile v. Bolden*, 446 U.S. 55, 100 (1980), put on plaintiffs the "burden of proving discriminatory intent" in Fifteenth Amendment cases); *See also Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 481 (1997); *Village of Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977); *Washington v. Davis*, 426 U.S. 229, 241–42 (1976).

In response to the Metro Council's Motion to Dismiss, Plaintiffs claim they successfully allege discriminatory intent by citing a single paragraph from their Complaint.[17] Specifically, paragraph 187 of the Complaint alleges that "Defendants approved this map so as to dilute the votes of Black voters and thereby treat voters unequally under its laws."[18] This is not enough to carry their burden. Again, Welborn did not draw and adopt the 2025 map, and he has no authority to approve or reject the 2025 map. As such, Welborn should be dismissed.

[17] Rec. Doc. 20, P. 12.
[18] *Id.*

It is clear that there is no discriminatory intent that can be tied to Welborn. Indeed, the Complaint provides no facts of willful discrimination by Welborn in carrying out his official duties, nor does the Complaint reveal any violation of official duties regarding Welborn and the redistricting process. As thoroughly discussed above, Welborn did not select or approve any map to be used in Metropolitan Council elections. Plaintiffs have failed to argue, much less establish, that Welborn possessed the requisite showing of intentional discrimination. As such, Plaintiffs have not alleged facts sufficient to state a claim under the Fourteenth and Fifteenth Amendments to the United States Constitution.

III. CONCLUSION

For the foregoing reasons, Defendant, Doug Welborn, in his capacity as the Clerk of Court for East Baton Rouge Parish, respectfully requests that his Motion to Dismiss be granted in all respects, and that Plaintiffs' *Complaint* be dismissed with prejudice in its entirety. Welborn brings this motion and memorandum without waiver or prejudice to his right to assert defenses herein.

Respectfully submitted on November 6, 2024.

SHOWS, CALL & WALSH, L.L.P.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of November, 2024, a copy of the foregoing has been served upon all counsel of record via CM/ECF system and has been filed electronically with the Clerk of Court using the CM/ECF system.

/s/ John C. Conine, Jr.
John C. Conine, Jr.