UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

COMMON CAUSE INDIANA, ANDERSON-MADISON COUNTY NAACP BRANCH 3058, LEAGUE OF WOMEN VOTERS OF INDIANA, CASSANDRA RIGGS, and JEFFREY J. COTTRELL,	)	
Plaintiffs,	)	
v.	)	CAUSE NO. 1:23-cv-1022-JRS-TAB
CITY OF ANDERSON COMMON COUNCIL, and the MADISON COUNTY BOARD OF ELECTIONS,	)	
Defendants.	)	

PLAINTIFFS' BRIEF IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

I. INTRODUCTION

Plaintiffs are three non-partisan public interest organizations with members who reside in the City of Anderson, and two voters in Anderson who reside and vote in a severely overpopulated Council district (collectively "Plaintiffs"). They filed this action seeking declaratory and injunctive relief because the six (6) single-member districts from which members of the Anderson Common Council (the "Council") are elected are severely malapportioned in violation of the Equal

Protection Clause of the Fourteenth Amendment. Notwithstanding these severely malapportioned districts, the Council failed and refused to approve a new redistricting plan after the 2020 census numbers became available and voted at a Council meeting on December 11, 2022, not to adjust district boundaries to achieve population equality. (ECF No. 28-1 at 4) (Kauffman Declaration, ¶ 22).

Plaintiffs have brought this action against the Council and the Madison County Board of Elections ("Board") pursuant to 42 U.S.C. § 1983. They ask the Court to declare those districts unconstitutional and to enjoin any further elections after the imminent November 7, 2023, municipal election until new, constitutionally-acceptable districts are in place that are substantially equal in population.

II. POPULATION DEVIATION IN ANDERSONS' SIX SINGLE-MEMBER DISTRICTS

Anderson, Indiana has a population of 54,777, according to the 2020 decennial census, and is designated by state law as a second-class city. (ECF No. 28-1 at 3) (Kauffman Dec. ¶ 13). The decennial census figures released in September 2021 show that the six single-member districts of the Anderson Common Council had the following populations: District 1: 9,627 (est.); District 2: 9,151; District 3: 11,644 (est.); District 4: 7,490; District 5: 8,494; District 6: 8,364. (ECF No. 28-1 at 3) (Kauffman Dec. ¶ 14).

The average or ideal population for every district is calculated by dividing the total population by the number of districts. Since Anderson's total population in the 2020 decennial census was 54,777 and there are six single-member districts on the Common Council, the average (ideal) district population is 9,128. (ECF No. 28-1 at 3) (Kauffman Dec. ¶ 15). The total population deviation is calculated by subtracting the smallest district population from the largest district population and dividing by the average (ideal) district population. (ECF No. 28-1 at 3) (Kauffman Dec. ¶ 16).[1]

The total population deviation in Anderson's current Council districts is the difference between the population of District 3 (the largest district) minus the population of District 4 (the smallest) divided by the average (ideal) district size, that is: 11,644 – 7,490 / 9,128, which equals 45%. (ECF No. 28-1 at 3) (Kauffman Dec. ¶ 17). In lay terms, each vote cast in District 3 is worth only approximately two-thirds as much as a vote cast in District 4. This value is determined by dividing the population of the smaller district by the population of the larger district: 7,490 / 11,644 = 64%. (ECF No. 28-1 at 3) (Kauffman Dec. ¶ 18).

On October 14, 2022, Dr. Kauffman corresponded with the president of the Anderson Common Council, Rebecca Crumes, regarding whether the Council was

[1] *See Williams v. Jeffersonville City Council*, U.S. Dist. LEXIS 4590, *17-18 (S.D. Ind. 2003) (Hamilton, J.) (citing *Kirkpatrick v. Preisler*, 494 U.S.526, 529 n. 1 (1969)).

going to redistrict or recertify existing districts. Dr. Kauffman provided her estimate of the population deviation for the Council's six single-member districts and urged President Crumes and the Council to undertake redistricting as soon as possible. Dr. Kauffman offered her services[2], free-of-charge, in creating acceptable maps. (ECF No. 28-1 at 3) (Kauffman Dec. ¶ 19). The Council failed to take any action at that point, and on November 19, 2022, Dr. Kauffman emailed President Crumes and Council Member Dixon again urging the Council to redistrict. She attached an example of how District 4's boundaries could be drawn to expand it just far enough east to equalize populations among districts. (ECF No. 28-1 at 3) (Kauffman Dec. ¶ 20).

Despite Dr. Kauffman's efforts to inform the Council of its need to redistrict, the Council voted at its December 11, 2022, meeting not to change its existing boundary lines. (ECF No. 28-1 at 4) (Kauffman Dec. ¶ 22).

III. PRELIMINARY INJUNCTION STANDARDS

A. General requirements for the issuance of a preliminary injunction.

A preliminary injunction is an extraordinary equitable remedy but is available to plaintiffs who can demonstrate the need to provide immediate relief to prevent irreparable harms that would occur prior to resolution of the case on the

[2] As explained in more detail in Dr. Kauffman's declaration, she is an expert in the field of redistricting and regularly provides redistricting services, with the help of a team of students, to local governments throughout Indiana.

merits. *See Turnell v. Centimark Corp*., 796 F.3d 656, 661 (7th Cir. 2015). "As a threshold matter, a party seeking a preliminary injunction must demonstrate (1) a likelihood of succeeding on the merits, and (2) that it has 'no adequate remedy at law' and will suffer 'irreparable harm' if preliminary relief is denied." *Cassell v. Snyders*, 990 F.3d 539, 544-45 (7th Cir. 2021) (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)).

If the movant makes this showing, a district court must then consider two additional factors: "the irreparable harm the non-moving party will suffer if preliminary relief is granted, balancing that harm against the irreparable harm to the moving party if relief is denied" and "the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Cassell*, 990 F.3d at 545 (quoting *Abbott Labs.*, 971 F.2d at 11-12); *Illinois Republican Party v. Pritzker,* 973 F.3d 760, 762 (7th Cir. 2020). A district court must equitably weigh these four factors together to determine if a preliminary injunction is warranted. *Fire Fighters, Local 365 v. City of E. Chicago*, 56 F.4th 437, 446 (7th Cir. 2022). The court must also weigh the harm that the plaintiff will suffer absent an injunction against the harm to the defendant from an injunction, and consider whether an injunction is in the public interest. *Id*. The higher a plaintiff's likelihood of success on the merits, the less decisively the balance of harms must tilt in favor of preliminary relief. *Ty, Inc. v. Jones Group, Inc*., 237 F.3d 891, 897

(7th Cir. 2001). And even if a court finds a lesser likelihood of success on the merits, a preliminary injunction is warranted where the balance of the harm tips heavily in plaintiff's favor. *Id*. at 897.

A court may grant a preliminary injunction based on less formal procedures and on less extensive evidence than required at a trial on the merits. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395(1981) ("[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.") For example, courts may rely on hearsay and various other normally-inadmissible materials, documents, and statements, because the Federal Rules of Evidence apply differently in a proceeding on a motion for a preliminary relief. *Goodman v. Ill. Dept. Of Financial and Professional Regulation*, 430 F.3d 432, 439 (7th Cir. 2005); *Ty, Inc. v. GMA Accessories, Inc.,* 132 F.3d 1167, 1171 (7th Cir. 1997) (affidavit that would be inadmissible at trial could be considered in a summary proceeding such as a proceeding on a preliminary injunction motion).

1. Plaintiffs are Likely to Succeed on the Merits

Plaintiffs must first and most importantly make a strong showing that they are likely to succeed on the merits. *A.C. v. Metro. Sch. Dist. of Martinsville,* 75 F.4th 760*,* 766-67(7th Cir. 2023) (citing *Illinois Republican Party v. Pritzker,* 973 F.3d at 762). A mere possibility of success is not enough, though a plaintiff

seeking a preliminary injunction is not required to prove it will "definitely win the case." *A.C.,* 75 F.4th at 768.

i. The constitutional mandate of substantial population equality among electoral districts is firmly established.

The Equal Protection Clause of the Fourteenth Amendment requires the legislative body of a governmental entity "to make an honest and good faith effort to construct [legislative] districts . . . as nearly as equal in population as practicable." *Reynolds v. Sims*, 377 U.S. 533, 577 (1964); *Avery v. Midland Cty., Tex.*, 390 U.S. 474, 480 (1968) (holding that a local governmental unit must draw its legislative districts in compliance with the Equal Protection Clause of the Fourteenth Amendment). Districts that make votes "worth more in one district than in another would run counter to our fundamental ideas of democratic government." *Reynolds*, at 563; *Gray v. Sanders*, 372 U.S. 368, 379 (1963) (the Equal Protection Clause requires that "all who participate in the election are to have an equal vote").

The timing of the redistricting requirement is also well-established. "Reapportionment following a decennial census is the constitutional norm." *Ramos v. State of Illinois,* 781 F. Supp. 1353, 1356 (N.D. Ill. 1991) (citing *Reynolds*). The undisputed evidence demonstrates that the Council flaunted this constitutional imperative.

Plaintiffs are not required to prove, and indeed Plaintiffs do not allege, that the Council engaged in any deliberate effort to dilute any group's voting power when it failed to perform its constitutional obligation to redistrict. They allege, and have proved through the Declaration of Dr. Kauffman, that the Council's districts are malapportioned. This is all that is required for this type of equal protection claim. *Tucker v. U.S. Dept. of Commerce*, 958 F.2d 1411, 1414 (7th Cir. 1992) ("It is enough that the [Council's] districts are malapportioned."); *City of New York v. U.S. Dept. of Commerce,* 34 F.3d 1114, 1129-30 (2nd Cir. 1994) ("Although for most types of equal protection claims, a plaintiff must show that the government's discrimination was intentional [citations omitted], the Supreme Court has not imposed such a requirement in any of the cases involving apportionment.")

ii. The equal population mandates of the Fourteenth Amendment apply to local governmental legislative bodies.

The one person-one vote principle arising from the Equal Protection Clause of the Fourteenth Amendment is not limited to federal elections. That mandate also applies to elections for local governmental representatives who are elected from geographic districts to serve on local legislative bodies such as city councils. *Avery v. Midland County, Tex.,* 390 U.S. 474, 481-85 (1983); *Raleigh Wake Citizens Ass'n v. Wake Cnty. Bd. of Elections,* 873 F.3d 333, 340 (4th Cir. 2016); *Williams*, 2003 U.S. Dist. LEXIS 4590 at *17.

State or local governmental units have greater leeway to apportion than is the case in Congressional redistricting. However, an apportionment plan for a local governmental unit that exceeds 10% total population deviation creates a *prima facie* case of discrimination and therefore must be justified by the defendants in an equal protection case based on population disparities among electoral districts. *Evenwel v. Abbott*, 578 U.S. 54, 59-60 (2016).

Though States must draw congressional districts with populations as close to perfect equality as possible, *Kirkpatrick*, 394 U. S. at 530-531, state and local legislative districts are permitted to deviate modestly from perfect population equality, but only if necessary to accommodate traditional districting objectives, such as preserving the integrity of political subdivisions, maintaining communities of interest, or creating geographic compactness. *Brown* v. *Thomson*, 462 U. S. 835, 842-843 (1983). Where the maximum population deviation between the largest and smallest district is less than 10%, a state or local legislative map presumptively complies with the one-person, one-vote equal protection mandate. Maximum deviations above 10% are presumptively impermissible. *Mahan* v. *Howell*, 410 U. S. 315, 329 (1973) (approving a state-legislative map with maximum population deviation of 16% to accommodate the State's interest in "maintaining the integrity of political subdivision lines," but cautioning that this deviation "may well approach tolerable limits").

iii. The total population deviation in the Council's current apportionment plan far exceeds constitutional guidelines.

To determine total deviation, courts assess the gap between the "ideal" population of each district, on the one hand, and the districts drawn by the legislative body. This so-called "maximum population deviation" is the sum of the percentage deviations from perfect population equality of the most- and least-populated districts. *Williams*, 2003 U.S. Dist. LEXIS 4590 at *18 (citing *Kirkpatrick v. Preisler*, 394 U.S. 526, 529 n. 1 (1969) and *Wells v. Rockefeller*, 394 U.S. 542, 547 (1969)); *see also Vigo County Republican Cent. Comm. v. Vigo County Commissioners*, 834 F. Supp. 1080, 1083 n.5 (S.D. Ind. 1993) (Tinder, J.). *Reynolds* and its progeny teach that courts may tolerate *de minimis* variances and that a total deviation under 10% falls within the category of minor deviations. However, "[a] plan with larger disparities in population…creates a *prima facie* case of discrimination and therefore must be justified by the State." *Brown v. Thomson,* 462 U.S. at 842–43. The Supreme Court has ruled that "variations of 30% among senate districts and 40% among house districts can hardly be deemed *de minimis* and…differences of this magnitude [could not] be approved" absent strong justification. And in *Swann v. Adams,* 385 U.S. 440, 444 (1967), the Supreme Court held that a total deviation of 25.65%, much smaller than the deviation in the Council's current plan, violated equal protection. Here, Plaintiffs

have established that the total deviation in the Council's current redistricting scheme is 45%. (ECF No. 28-1 at 3) (Kauffman Declaration, ¶ 17).

Plaintiffs have demonstrated through Dr. Kauffman's Declaration that the Council's current districts are severely malapportioned, as shown by 2020 federal census data, and that this is causing the value of their votes to be substantially diluted. "[V]ote dilution is as nefarious as an outright prohibition on voting." *Duncan v. Coffee Cnty, Tenn.,* 69 F.3d 88, 93 (6th Cir. 1995). Moreover, as explained, *supra,* Plaintiffs are not required to prove that the malapportioned districts reflect a deliberate effort to dilute any group's voting power; it is sufficient to show the districts currently operative are severely malapportioned.

2. *Absent an Injunction, Plaintiffs Will Suffer Irreparable Harm and They Have No Adequate Remedy at Law*

Plaintiffs will be irreparably harmed unless the Court preliminarily enjoins the holding of any additional elections under the current malapportioned districts. Infringements on the right to an equal vote because of vote dilution, like other constitutional violations, are presumed to cause irreparable harm. *Ezell v. City of Chi*., 651 F.3d 684, 699 (7th Cir. 2011). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Id.* The loss of constitutional rights constitutes irreparable harm. *See Preston v. Thompson*, 589 F.2d 300, 303 n.4 (7th

Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm."); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (where plaintiff had proven a probability of success on the merits, the threatened loss of First Amendment freedoms "unquestionably constitutes irreparable injury"). More specifically, courts have held that infringement on the fundamental right to vote amounts to an irreparable injury. *See Obama for Am. v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012) ("A restriction on the fundamental right to vote . . . constitutes irreparable injury."); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs "would certainly suffer irreparable harm if their right to vote were impinged upon").

Voters who live in an electoral district that is severely malapportioned are deprived of their clear "constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." *Coleman v. Winbigler,* 615 F. Supp. 3d 563, 575 (E.D. Ky. 2022) (quoting *Dunn v. Blumstein,* 405 U.S. 330, 336 (1972)). Plaintiffs have no legal remedies such as damages to redress this ongoing vote dilution.

Federal courts, including those in this district, have held that a violation of the right to vote is a *per se* irreparable injury. *See, e.g.*, *Common Cause Ind. v. Lawson*, 327 F. Supp. 3d 1139, 1155 (S.D. Ind. 2018) (Pratt, J.), *aff'd on other grounds* 937 F.3d 944 (7th Cir. 2019) (a violation of the right to vote is

presumptively an irreparable harm [citations omitted]); s*ee also League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

An inadequate remedy at law is one "seriously deficient as compared to the harm suffered." *Foodcomm Int'l v. Barry*, 328 F.3d 300, 304 (7th Cir. 2003). If this Court were to decline to enjoin future elections using the current malapportioned districts, Plaintiffs and thousands of Anderson voters will continue to experience dilution of their vote. Diluting the weight of votes because of place of residence impairs basic constitutional rights just as much as invidious discrimination based on factors such as race or economic status. *Reynolds v. Sims,* 377 U.S. at 566.

3. The Balance of Harms Weighs Decisively in Plaintiffs' Favor

The irreparable harm that Plaintiffs will suffer absent an injunction outweighs any administrative burden that would be imposed on Defendants by an injunction. *Girl Scouts of Manitou Council, Inc.,* 549 F.3d at 1100 (describing the balancing test as weighing "the irreparable harm risked by the moving party in the absence of a preliminary injunction against the irreparable harm risked by the nonmoving party if the preliminary injunction is granted"). In performing this sliding-scale analysis, "the court bears in mind that the purpose of a preliminary injunction is 'to minimize the hardship to the parties pending the ultimate resolution of the lawsuit.'" *AM Gen. Corp*, 311 F.3d at 804 (quoting *Platinum*

Home Mortgage Corp. v. Platinum Financial Group, Inc., 149 F.3d 722, 726 (7th Cir. 1998)).

Allowing further elections to be held under a severely malapportioned map would cause irreparable harm to fundamental constitutional rights. An injunction to compel Defendants to conduct special elections in 2024 under a map with districts of substantially equal populations would prevent any further vote dilution and would not cause any undue administrative burdens, as elections are already scheduled on May 7 and November 5, 2024.

4. The Public Interest Favors Protecting the Fundamental Right to Vote by Enjoining Further Elections Under the Current Malapportioned Map

The public interest is best served by ensuring that all eligible voters have their votes weigh equally. "Enforcing a constitutional right is in the public interest." *Whole Woman's Health All. v. Hill*, 937 F.3d 864, 875 (7th Cir. 2019). In considering preliminary injunctive relief, courts have made clear that "the public has a 'strong interest in exercising the fundamental political right to vote.'" *Obama for Am. v. Husted*, 697 F.3d at 436 (quoting *Purcell v. Gonzalez*, 549 U.S. at 4).

Here, the malapportioned map violates both the U.S. Constitution and Indiana law and dilutes the votes of Plaintiffs and other Anderson voters who live in overpopulated districts because of the Council's failure to redistrict following

the 2020 census. Enjoining the holding of further Council elections until a new remedial map is approved by the Court and special elections are held will prevent voters from having their vote continue to be diluted through no fault of their own. Anderson voters and the public at large have a strong interest in the Court enjoining any elections under the current malapportioned map and holding future elections in properly apportioned districts.

The public interest is further served by an injunction because failing to prevent this vote dilution would undermine public confidence that elections for the Council are administered fairly and that all eligible voter's votes are relatively equal in weight. *Crawford v. Marion County Election Bd.,* 553 U.S. 181, 197 (2008) (protecting public confidence in the "integrity and legitimacy" of elections is an important governmental interest).

5. A Preliminary Injunction Should Issue Without Bond

A district court has discretion to issue a preliminary injunction without a bond. A bond is not necessary for a preliminary injunction to take effect. *Wayne Chemical, Inc. v. Columbus Agency Services Corp.,* 567 F.2d 692, 701 (7th Cir. 1977). Moreover, since Plaintiffs are proposing to hold special elections in 2024 coterminous with already-scheduled federal and state elections, Defendant Board of Elections should not incur any more than *de minimis* additional costs. As the Defendants are unlikely to demonstrate that a preliminary injunction compelling

the Council to comply with the equal population requirements of the Fourteenth Amendment will cause Defendants to suffer any monetary injuries, no bond should be required.

III. CONCLUSION

Although redistricting is an inherently political exercise, where a legislative body has failed to act, a court-ordered remedial plan should ordinarily achieve the goal of population equality with little more than a *de minimis* deviation. *Bowman v. Chambers,* 586 F. Supp. 3d 926, 935 (E.D. Mo. 2022) (city council districts). Thus, should the Court agree that the Council's districts are malapportioned beyond tolerable constitutional limits, it has less latitude than would a legislative body to draw new districts. "Court-ordered districts are held to higher standards of population equality than legislative ones," and should "achieve the goal of population equality with little more than *de minimis* variation." *Abrams v. Johnson,* 521 U.S. 74, 98 (1997). Population deviations that might survive scrutiny if done by a legislative body are unlikely to be acceptable in a court-drawn plan. *Williams*, 2003 U.S. Dist. LEXIS 4590 at *6-7 (citing *Chapman v. Meier,* 420 U.S. 1, 24 (1975) and *Connor v. Finch,* 431 U.S. 407, 414-15 (1978)). A court-ordered plan also may not take into account politics and political considerations such as drawing districts in such a way as to protect incumbents. *Wyche v. Madison Parish Police Jury,* 769 F.2d 265, 268 (5th Cir. 1985); *see also Peterson v. Borst,* 786 N.E.2d

668, 672 (Ind. 2003) (political considerations that might be tolerated in a legislatively-implemented plan have no place in a court-ordered plan, citing cases).

Dr. Kauffman's Declaration demonstrates that the Council's current severely malapportioned districts presumptively violate the Equal Protection Clause. The appropriate remedy is to enjoin Defendants from holding further elections using those malapportioned districts until lawful districts are in place. "[O]nce [an apportionment scheme] has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." *Reynolds,* 377 U.S. at 585; *see also City of Greensboro v. Guilford Cty. Bd. of Elections*, 251 F. Supp. 3d 935, 951- 952 (M.D.N.C. 2017).

However, at the time this suit was filed, the primary election had already been held and the general municipal election is just a few weeks away. In *Purcell v. Gonzalez,* 549 U.S. 1 (2006), the Supreme Court cautioned that last-minute court interventions to change voting rules, including changes to voting districts, are strongly disfavored because they could cause confusion among the electorate. *See, e.g., Merrill v. Milligan,* 142 S. Ct. 878 (2022) (staying redistricting order after a finding the current districting map violated the Voting Rights Act because it would disrupt an imminent election). *Purcell* echoes the concerns expressed in *Reynolds,* 377 U.S. at 585, that where (as here) an election is imminent, equitable

considerations may justify a court withholding the granting of immediate relief even after an existing apportionment plan has been found unconstitutional. As the Supreme Court explained in *Upham v. Seamon,* "[W]e have authorized District Courts to order or to permit elections to be held pursuant to apportionment plans that do not in all respects measure up to the legal requirements, even constitutional requirements. Necessity has been the motivating factor in these situations." 456 U.S. 37, 44 (1982) (*per curiam*) (internal citations omitted).

"Relief in redistricting cases is 'fashioned in the light of well-known principles of equity.'" *North Carolina v. Covington*, 581 U.S. 486, 488 (2017) (quoting *Reynolds*, 377 U.S. at 585). A court must "undertake an equitable weighing process to select a fitting remedy for the legal violations it has identified, taking account of what is necessary, what is fair, and what is workable." *Id.* (cleaned up).

For these reasons, Plaintiffs do not seek to enjoin the November 7, 2023, general election for the Council's six members who are elected from single-member districts. Instead, they ask the Court, after determining the current map is unconstitutional, to shorten the terms of councilors elected in the 2023 election and

order a special election after the Council's boundaries have been adjusted to eliminate the current severe population disparities.[3]

For the foregoing reasons, the Court should preliminarily enjoin Defendants Council and Board of Elections from conducting further elections in the six single-member Council districts until a new redistricting plan is in place, and modify election deadlines, if necessary, in order to conduct special primary and general elections in 2024 and beyond for the Council under a remedial districting plan devised by the Court, potentially with the assistance of a special master appointed pursuant to Fed. R. Civ. P. 53. *See, e.g., Harper v. City of Chicago Heights*, 2006 U.S. Dist. LEXIS 5025, 10952 (N.D. Ill. 2006) (special master appointed to recommend map consisting of districts of relatively equal population); *Wisconsin v. Zimmerman*, 209 F. Supp. 183 (W.D. Wis. 1962) (special master appointed to draw new districts after legislature failed to redistrict after 1960 census); *see also Singleton v. Allen*, 2023 U.S. Dist. LEXIS 155998, *16 (N.D. Ala. 2023) (three-judge court) (referring to a special master the task of drawing new Congressional districts after United State Supreme Court ruled prior map violated Section 2 of the

[3] The fact that an election has been held using these unconstitutional districts will not moot Plaintiffs' claims, as their request for shortened terms and special primary and general elections in 2024 would defeat any mootness claim. *DeCola v. Starke Cnty. Election Bd.,* 2020 U.S. Dist. LEXIS 195407, *4 (N.D. Ind. 2020) (Leichty, J.) (citing *Gjertsen v. Bd. of Election Comm'rs for City of Chicago,* 791 F.2d 472,478-80 (7th Cir. 1986), and *Lopez v. City of Houston,* 617 F.3d 336, 340 (5th Cir. 2010) ("Invalidation of a past election can…be a viable remedy that will save a claim from mootness even after the election has passed.")).

Voting Rights Act).

Respectfully submitted,

/s/ William R. Groth
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CERTIFICATE OF SERVICE

I hereby certified that the foregoing has been filed via the electronic filing system on September 20, 2023. Notice of filing will be performed by the Court's electronic filing system, and Parties may access the document through the electronic filing system.

/s/ William R. Groth
William R. Groth