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' RESPONSE IN OPPOSITION TO DEFENDANT COUNCIL'S MOTION TO STAY PROCEEDINGS

Plaintiffs, by their undersigned counsel, file their response in opposition to Defendant City of Anderson Common Council's Motion to Stay Proceedings [ECF No. 62], and state as follows:

I. Procedural background

Plaintiffs filed their Complaint in this case on June 13, 2023, over ten (10) months ago, alleging that the electoral districts presently being used by Defendant Anderson Common Council (the "Council") are severely malapportioned in violation of the Equal Protection Clause of the Fourteenth Amendment. The

Council chose not to answer and instead filed a motion to dismiss, which the Court denied on October 4, 2023. [ECF No. 34.] The Council's attorneys thereafter issued written discovery to and took the depositions of each of the five (5) individual and organizational Plaintiffs. Each of those depositions lasted several hours.

After a settlement conference held on December 20, 2023, failed to result in an agreement on a new redistricting map, on January 22, 2024[1], Plaintiffs filed a motion for partial summary judgment seeking a declaration that the current Council map violates the Fourteenth Amendment. [ECF No. 46.] The Council has yet to concede its districts are malapportioned. Instead of timely responding to Plaintiffs' summary judgment motion, the Council filed a motion pursuant to Fed. R. Civ. P. 56(d) on February 5 seeking to stay the briefing. [ECF No. 53.] The Court granted the Council's motion in part and ordered the Council to conduct the two additional depositions it sought by March 5 and to file its response brief by March 22.

The Council took one of those depositions (Kelsey Kauffman), but then on March 8, filed a motion for yet another extension of time to take the second deposition (Sarah Andre) by April 5 and to file its response brief by April 22, which the Court granted. [ECF No. 60 (motion); ECF No. 61 (order)] Plaintiffs

[1] All dates referenced from this point are in 2024 unless indicated otherwise.

agreed to this extension because the Council stated that it wanted time to resume settlement discussions. *Id*. at ¶¶ 3-7. Plaintiffs accepted the Council at its word and submitted an updated settlement demand on March 5. The Council never responded to that demand.

Instead of filing a response to Plaintiffs' summary judgment motion by the April 22 briefing deadline, the Council filed yet another motion to stay this case until July 1, 2025, the extended deadline for second class cities to redistrict. [ECF No. 62.] The Council has not redistricted its malapportioned districts and provides the Court with no firm timetable for when this will occur, only that it hopes to redistrict at some point in the next 14 months. The Council provides no explanation as to why it could not have also filed a response to Plaintiffs' motion for summary judgment, nor did it request an extension of time to do so prior to the April 22 deadline.

II. This case continues to present a live case or controversy.

It is undisputed that the Council voted not to redistrict in December of 2022, and neither did the Council redistrict after either the 2010 or 2000 federal censuses. [ECF No. 46-2 at 2 (Council Admissions 4-6)]. However, the Council now says that it hopes to redistrict at some point before July 1, 2025, after which this case "will no longer present any Article III case or controversy." [ECF No 62 at 2.] However, even if the Council were to redistrict while this case is pending, it would

not render the case moot because Plaintiffs also seek invalidation of the 2023 election and a special election. *DeCola v. Starke Co. Elec. Bd.,* 2020 U.S. Dist. LEXIS 195407 (N.D. Ind. 2020) (a request for a special election will save a claim from mootness). As long as there remains "some form of meaningful relief" that the Court could provide if Plaintiffs were successful on the merits, there remains a live controversy. *Pakovich v. Verizon LTD Plan,* 653 F.3d 488, 492 (7th Cir. 2011).

Moreover, the malapportioned districts remain in place and have not been remedied, and Plaintiffs are suffering a continuing constitutional injury. There is still a live controversy, and this Court is not required to dismiss a live controversy as moot merely because it might become moot sometime in the indeterminate future. *See, e.g., Forestkeeper v. Tidwell*, 847 F. Supp. 2d 1217, 1238 (E.D. Cal. 2012) (citing *Hunt v. Imperial Merchant Servs.,* 560 F.3d 1137, 1142 (9th Cir. 2009)).

Finally, the single case relied on by the Council, *Arrington v. Election Board of the State of Wisconsin*, does not hold otherwise. There, the plaintiffs filed their malapportionment suit approximately *one month* after the Census Bureau certified Wisconsin's population. *Arrington v. Elections Bd.*, 173 F. Supp. 2d 856, 858 (E.D. Wis. 2001). Chief District Court Judge Stadtmueller, writing for the three-judge district court panel, held that because the suit was filed immediately after the census, the state legislature had not yet had an opportunity to pass redistricting

legislation, and therefore a stay of the proceedings for a "reasonable" amount of time was warranted. *Id*. at 860. The complaint in this case was filed *several years* after the 2020 census and after the Council affirmatively voted not to redistrict on December 11, 2022, while it still had time to do so under state law. [ECF No. 35 at 7 (Answer, ¶ 20).] Lastly, unlike this case, elections under the malapportioned districts in Wisconsin had not yet occurred and the *Arrington* court was not presented with the requested relief here—invalidation of the 2023 election and a special election. *Arrington* is thus inapplicable.

III. The Council has not met its burden to show a stay should be entered.

The burden of showing that the circumstances of a particular case justify a stay falls to the party requesting the stay. *Nken v. Holder,* 556 U.S. 418, 433-34 (2009). The Council has fallen woefully short of making such a showing. Granting the Council yet another stay would leave it free to continue to proceed at its own deliberate pace in the face of Plaintiffs' continuing irreparable constitutional injury. Granting a discretionary stay would also be contrary to this Court's "strict duty to exercise jurisdiction in a timely manner." *Solutions v. Xos Techs.,* 2015 U.S. Dist. LEXIS 196226, *3-4 (N.D. Ind. 2015) (citing and quoting *Grice Eng'g, Inc. v. JG Innovations, Inc.*, 691 F. Supp. 2d 915, 920 (W.D. Wis. 2010)).

While district courts have discretion to grant a stay as an incident to docket management, granting a requested stay is far from routine or automatic. Courts in

this circuit consider a number of factors in determining whether to grant a requested stay. These factors include: (1) whether the litigation is at an early stage (2) whether a stay will unduly prejudice or tactically disadvantage the non-moving party; (3) whether a stay will simplify the issues in question and streamline the trial; and (4) whether a stay will reduce the burden of litigation on the parties and on the court. *Saturday Evening Post Soc'y, Inc. v. The Cincinnati Ins. Co.,* 2022 U.S. Dist. LEXIS 203088 (S.D. Ind. 2022) (citing *Tonn & Blank Constr., LLC v. Sebelius*, 968 F. Supp. 2d 990, 993 (N.D. Ind. 2013)). Generally, "imposing a stay requires the court to balance interests favoring a stay against interests frustrated by the action in light of the court's strict duty to exercise jurisdiction in a timely manner." *Williams v. CashCall, Inc.,* 92 F. Supp. 3d 847, 856-57 (E.D. Wis. 2015); *Grice Eng'g, Inc. v. JG Innovations, Inc.*, 691 F. Supp. 2d 915, 920 (W.D. Wis. 2010). Looking at these factors and balancing the parties' respective interests, the requested stay should be denied.

First, this case is not at an early stage. It has now been pending for more than ten (10) months, during which time Plaintiffs have been required to fend off an unmeritorious motion to dismiss and spend their and their attorneys' time attending seven (7) depositions. They have had to respond to copious written discovery served on them by the Council's attorneys and have had a motion for partial summary judgment pending before the Court since January 22, 2024. This

first factor weighs heavily against the Court granting the Council yet another stay. *Williams v. CashCall, Inc., supra* (refusing to stay lawsuit filed nine (9) months earlier).

Turning to the second factor, granting a further stay at the Council's request would severely prejudice Plaintiffs, who have already invested substantial time and resources in this litigation, and put them at a severe tactical disadvantage. Plaintiffs are suffering a continuing constitutional injury because of the Council's malapportioned districts. Moreover, the Council has yet to acknowledge more than ten months into this case that its current districts fail to comply with minimal constitutional equal population requirements. Plaintiffs' motion for partial summary judgment does no more than ask this Court to declare those districts in violation of the Fourteenth Amendment, thus placing the Council under an obligation imposed by the judiciary to timely remedy this ongoing violation, else facing the prospect that the Court will do so. Delaying such a judicial declaration would work a substantial tactical and financial disadvantage on Plaintiffs while rewarding the Council for its dilatory litigation tactics and ongoing failure to perform its constitutional duty.

Regarding the third factor, granting the Council yet another stay will do nothing to simplify the only issue presented in Plaintiffs' pending motion for partial summary judgment, which is whether the Council's districts are

unconstitutionally malapportioned. Resolution of the issue only requires straightforward arithmetic[2], and Plaintiffs are entitled to have the Court weigh in on this issue sooner rather than later given the ongoing violation of their constitutional rights. Indeed, it is hard to imagine how the issue could be simplified further given that the Council has chosen not to respond to Plaintiffs' summary judgment motion, thereby waiving any argument in opposition to it and authorizing the Court to summarily grant the motion pursuant to Local Rule 7-1(c)(5). *See also Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010) ("Failure to respond to an argument . . . results in waiver.")

IV. Conclusion

The Council's motion for a stay should be denied forthwith, and in light of its failure to respond to Plaintiffs' motion for partial summary judgment, the Court should summarily grant said motion and declare the Council's current single-member districts malapportioned in violation of the Equal Protection Clause of the Fourteenth Amendment.

Respectfully submitted,

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[2] *See* ECF No. 46-1 at 1 (Andre Dec. ¶ 5 (explaining basic subtraction and division used to calculate malapportionment)).

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CERTIFICATE OF SERVICE

I hereby certified that the foregoing has been filed via the electronic filing system on April 24, 2024. Notice of filing will be performed by the Court's electronic filing system, and Parties may access the document through the electronic filing system.

William R. Groth (7325-49)