

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.)

No. 1:23-cv-01022-JRS-TAB

CITY OF ANDERSON COMMON)
COUNCIL, and)
MADISON COUNTY BOARD OF)
ELECTIONS,)
)
Defendants.)

Order on Motion for Summary Judgment

This is an election redistricting case. Common Cause Indiana and others seek declaratory and injunctive relief preventing the Madison County Board of Elections and the City of Anderson Common Council ("Council") from holding elections for the Council using the current electoral districts. (ECF No. 46.) Plaintiffs allege that the current districts are malapportioned in violation of the Equal Protection Clause of the Fourteenth Amendment. (Compl. ¶ 29, ECF No. 1.) Plaintiffs now move for partial summary judgment seeking declaratory and injunctive relief. (ECF No. 46.) Defendants have not responded beyond seeking a stay, (ECF No. 62), which was previously denied, (ECF No. 64). For the reasons that follow, Plaintiffs' Motion for Partial Summary Judgment, (ECF No. 46), is **granted**.

I. Background

Anderson, Indiana has a population of 54,777 according to the 2020 census. (Pls.' Br. 2, ECF No. 47.) The Anderson City Council is comprised of six single-member districts. (Resp. to RFA No. 2, ECF No. 46-2.) The Council seats were not redistricted after the 2020 census. (*Id.* Nos. 4–6.) Plaintiffs are two advocacy organizations and individual voters who reside in District 3 of the City. (Compl. ¶¶ 7–10, ECF No. 1.) Plaintiffs allege that the Council's electoral districts are malapportioned in violation of the Equal Protection Clause. (*Id.* ¶ 29.)

Plaintiffs' argument for malapportionment rests on their calculation of the "total population deviation." (See Pls.' Br. 8–9, ECF No. 47.) A large total population deviation means that one legislative district has a significantly greater population than another. See *Evenwel v. Abbott*, 578 U.S. 54, 59–60 (2016). This suggests a constitutional violation because a person's vote in a larger district has less voting power than a person's vote in a relatively smaller district. *Id.* ("States must draw congressional districts with populations as close to perfect equality as possible."). In contrast, a minimal deviation means that districts have a relatively equal population, suggesting that the apportionment is constitutional. *Id.* A population deviation greater than ten percent creates a prima facie case of a constitutional violation and must be justified by the state. *Id.* at 60 ("Maximum deviations above 10% are presumptively impermissible."); *Brown v. Thomson*, 462 U.S. 835, 842 (1983); *League of Women Voters v. City of Chicago*, 757 F.3d 722, 725 (7th Cir. 2014).

Plaintiffs' calculation of the total population deviation was done by Sarah Andre, Redistricting Demography and Mapping Specialist for Common Cause. (Andre Decl. ¶¶ 1–4, ECF No. 46-1.) She took the following steps to make her calculation.¹ First, Andre determined the population of each district and arrived at the following distribution: District 1: 9,354; District 2: 9,151; District 3: 11,643; District 4: 7,490; District 5: 8,786; District 6: 8,364. (*Id.* ¶ 6.) Next, Andre determined the "ideal population" for each district by dividing the total population by the number of districts. (*Id.* ¶ 5.) Here, that number is 9,131 (i.e., $54,788 \div 6$) residents per district. (*Id.*) Finally, Andre calculated the "total population deviation" by subtracting the population of the least populated district (District 4) from the population of the most populated district (District 3), then dividing that number by the ideal population (i.e., $(11,643 - 7,490) \div 9,131 = .4548$). (*Id.*) Thus, according to Andre, after converting the result to a percent, the total population deviation is 45.48 percent. (*Id.*) Andre's calculation is in accordance with methods outlined by the National Conference of State Legislatures. NCSL, <https://www.ncsl.org/elections-and-campaigns/2020-redistricting-deviation-table> (last visited Sept. 30, 2024).

On January 22, 2024, Plaintiffs moved for partial summary judgment. (ECF No. 46.) They argue the population deviation of the Council's electoral districts is presumptively unconstitutional and that Defendants have not rebutted this presumption. (Pls.' Br. 8–9, ECF No. 47.) Plaintiffs seek a declaratory judgment that

¹ Any imprecision in the ensuing calculation here is so trivial as to be inconsequential. The underlying conclusion remains: The total population deviation far exceeds the 10% threshold for presumptive unconstitutionality.

the districts are unconstitutionally malapportioned and a permanent injunction prohibiting Defendants from holding further elections using the current electoral map. (ECF No. 46.) The Defendants' deadline to respond was April 22, 2024. (ECF No. 61.) As noted, Defendants did not respond on or before the deadline.

II. Legal Standard

Summary judgment is appropriate if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant bears the initial burden of production. *Modrowski v. Pigatto*, 712 F.3d 1166, 1168 (7th Cir. 2013). That initial burden consists of either "(1) showing that there is an absence of evidence supporting an essential element of the non-moving party's claim; or (2) presenting affirmative evidence that negates an essential element of the non-moving party's claim." *Hummel v. St. Joseph Cnty. Bd. of Comm'rs*, 817 F.3d 1010, 1016 (7th Cir. 2016) (citing *Modrowski*, 712 F.3d at 1169). If the movant discharges its initial burden, the burden shifts to the nonmovant, who must present evidence sufficient to establish a genuine issue of material fact on all essential elements of his case. *See Lewis v. CITGO Petroleum Corp.*, 561 F.3d 698, 702 (7th Cir. 2009). The Court must construe all facts and any reasonable inferences arising from them in favor of the nonmovant. *See Blow v. Bijora, Inc.*, 855 F.3d 793, 797 (7th Cir. 2017) (citation omitted).

III. Discussion

A. Constitutional Violation

Plaintiffs have met their burden of production to demonstrate no genuine issue of material fact, and Defendants failed to respond. Under the Equal Protection Clause

of the Fourteenth Amendment, seats in local legislative bodies must be "apportioned on a population basis." *Evenwel v. Abbott*, 578 U.S. 54, 59–60 (2016). This is known as the "one-person, one-vote" principle: states and their political subdivisions must design legislative districts with equal populations. *Id.* n.1 (citing *Avery v. Midland Cnty.*, 390 U.S. 474, 480 (1968) ("[A] state's political subdivisions must comply with the Fourteenth Amendment.")).

State and local legislative districts are permitted to deviate from perfect population equality to accommodate traditional districting objectives. *Id.* These objectives include preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographical compactness. *Id.* But a legislative apportionment is presumptively impermissible when the maximum deviation between the largest and smallest district is above ten percent. *Id.*; *League of Women Voters v. City of Chicago*, 757 F.3d 722, 725 (7th Cir. 2014).

Here, Plaintiffs' constitutional rights under the Equal Protection Clause were violated. The population deviation between District 4 and District 3 is forty-five percent. (Andre Decl. ¶ 6, ECF No. 46-1.) This is presumptively unconstitutional as it is greater than ten percent. *Evenwel*, 578 U.S. at 59–60. Defendants have not filed a response brief bringing forth evidence either that Ms. Andre's calculation is incorrect or that Anderson permits the large population deviation to account for traditional districting objectives.

Some of Defendants' answers denied Plaintiffs' request for admission to district population calculations. (Resp. to RFA No. 2 ¶¶1–3, ECF No. 46-2.) However, the

"mere existence of some alleged factual dispute" does not defeat an otherwise properly supported motion for summary judgment. *Watters v. Homeowners' Assoc. at Preserve at Bridgewater*, 48 F.4th 779, 784 (7th Cir. 2022). Instead, to defeat a properly supported motion for summary judgment, there must be enough evidence for a "reasonable jury" to find for the nonmoving party. *Id.* Here, in failing to respond, Defendants have not brought forth any evidence whatsoever. As such, no reasonable factfinder could find for Defendants.

Furthermore, numerous courts have found constitutional violations with population deviations smaller than the forty-five percent at issue in the present case. *See, e.g., Swann v. Adams*, 385 U.S. 440, 444 (1967) (explaining variations of thirty and forty percent are not de minimis); *Crumly v. Cobb Cnty. Bd. of Elections & Voter Registration*, 892 F. Supp. 2d 1333, 1343 (N.D. Ga. 2012) (finding a violation with a twenty-four percent deviation); *Smith v. Cobb Cnty. Bd. of Elections & Voter Registration*, 314 F. Supp. 2d 1274, 1285 (N.D. Ga. 2002) (finding violations with deviations of forty and sixty-seven percent); *Fairley v. Forrest Cnty.*, 814 F. Supp. 1327, 1330 (S.D. Miss. 1993) (finding a violation with a twenty-six percent deviation).

In sum, construing all facts and inferences in favor of Defendants, Plaintiffs have met their burden of production to show no genuine issue of material fact by demonstrating a population deviation above ten percent. Defendants have not filed a response to Plaintiffs' motion to rebut this presumption. Therefore, the Court finds the Council's single-member electoral districts are malapportioned in violation of the Equal Protection Clause.

B. Remedy

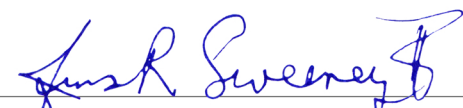
In filing their Motion for Partial Summary Judgment, Plaintiffs sought declaratory relief and an injunction preventing the Board of Elections from conducting further elections under the current malapportioned map. (ECF No. 46.) Plaintiffs later asserted that their "motion for partial summary judgment 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" (Pl.'s Resp. Opp'n Def. Council's Mot. to Stay Proceedings 7, ECF No. 63.) Given that Plaintiffs have limited the scope of their requested relief, and given the upcoming November 2024 national and state elections, and in order to avoid any potential voter confusion and interference with those elections, the Court declines to issue an injunction at this time. *See Merrill v. Milligan*, 142 S. Ct. 879 (Mem) (2022) (Kavanaugh, J., concurring) (explaining "federal district courts ordinarily should not enjoin state election laws in the period close to an election").

IV. Conclusion

Plaintiffs' Motion for Partial Summary Judgment, (ECF No. 46), is **granted** to the extent the Court declares that the City of Anderson's City Council single-member electoral districts are unconstitutionally malapportioned in violation of the Equal Protection Clause of the Fourteenth Amendment. Accordingly, Defendants are **ordered** to correct this ongoing violation.

SO ORDERED.

Date: 09/30/2024



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

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