UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KAREN FINN, *et al.*, Plaintiffs, -v- COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION, *et al.* Defendants.	Case No. 1:22-cv-2300-ELR

AMICUS BRIEF OF COBB COUNTY SCHOOL DISTRICT REGARDING MOOTNESS

Cobb County School District (the "District") files this Amicus Brief addressing the mootness issues raised by the Court in its August 20, 2024 Minute Order. For the reasons explained below, the District respectfully submits that this case is moot because the General Assembly has enacted a new redistricting map that has already been implemented for the 2024 election cycle.

BACKGROUND

On December 14, 2023, the Court issued a preliminary injunction enjoining the use of the then-applicable redistricting map ("the Challenged Map") for any future Cobb County Board of Education ("Board") elections, including the 2024 election cycle. (Doc. 212). On January 10, 2024, the Court imposed a January 22, 2024 deadline on the legislature to enact a remedial map based on representations

by the Cobb County Board of Elections and Registration ("BOER") that it could implement a remedial map for the 2024 election cycle if it was submitted by February 9, 2024. (Doc. 220, ¶ 3; Doc. 221). However, on January 19, 2024, the Eleventh Circuit stayed the preliminary injunction (Doc. 227) and denied Plaintiffs' emergency motion to lift the stay on January 25, 2024. (Exhibit 1, attached).

In the meantime, the General Assembly repealed the Challenged Map and enacted a new redistricting map ("the Enacted Map"), which Governor Kemp signed into law on January 30, 2024. (Doc. 233). The BOER implemented the Enacted Map for use during the May 21, 2024 primary elections for seats on the Board, and the Enacted Map will be used for the general election on November 5, 2024.

On August 13, 2024, the Eleventh Circuit issued its opinion dismissing the District's appeal on the ground that it lacked standing as a nonparty. (Doc. 241). In doing so, it noted (but did not address) that there was also a jurisdictional issue as to whether the appeal was moot in light of the legislature's adoption of the Enacted Map. (*Id.*, p. 7 n.1). On August 20, 2024, the Court issued a Minute Order instructing the parties to file briefs on the mootness issue raised by the Eleventh Circuit.

II. ARGUMENT AND CITATION OF AUTHORITY

A. A Superseding Statute Typically Moots Case Challenging Previous Statute

"The doctrine of mootness derives directly from the [Article III] case-or-controversy limitation because 'an action that is moot cannot be characterized as an

active case or controversy.'" *Hall v. Secretary, Alabama*, 902 F.3d 1294, 1297 (11th Cir. 2018) (citation omitted). "A case is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Id*. (punctuation and citation omitted). An actual case or controversy must continue to exist "at all stages" of a case, "not merely at the time the complaint is filed." *Hand v. DeSantis*, 946 F.3d 1272, 1275 (11th Cir. 2020) (quoting *Steffel v. Thompson*, 415 U.S. 452, 459 n.10 (1974)). "If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed." *Hand*, 946 F.3d at 1275 (punctuation and citations omitted).

Typically, "'[w]hen a party challenges a law as unconstitutional and seeks[] declaratory and prospective injunctive relief, a superseding statute or regulation moots [the] case[.]'" *Checkers Cab Operators, Inc., v. Miami-Dade County*, 899 F.3d 908, 915 (11th Cir. 2018) (quoting *Crown Media, LLC v. Gwinnett Cty.*, 310 F.3d 1317, 1324 (11th Cir. 2004)). Indeed, the Eleventh Circuit has observed that "[t]he Supreme Court has ruled in a number of cases that the enactment of new legislation which repeals or materially amends the law being challenged—even if the change comes after the district court's judgment—renders the lawsuit and/or appeal moot and deprives the court of jurisdiction." *U.S. v. Georgia*, 778 F.3d 1202, 1204 (11th Cir. 2015) (citing cases). The reason for this outcome "is

straightforward. When a challenged law is [repealed and replaced], it cannot inflict further injury redressable by declaration or injunction." *Checkers,* 899 F.3d at 915 (citing cases). Therefore, "in the absence of evidence indicating that the government intends to return to its prior legislative scheme, repeal of an allegedly offensive statute moots legal challenges to the validity of that statute." *Georgia*, 778 F.3d at 1205 (punctuation and citations omitted).

Thus, the Supreme Court and the Eleventh Circuit have held that the repeal, replacement and/or amendment of a statute being challenged in litigation renders a case moot even during an appeal or even after the Supreme Court has granted certiorari. *See*, *e.g.*, *New York State Rifle & Pistol Assoc., Inc. v. City of New York, New York*, 140 S. Ct. 1525, 1526 (2020) (amendment to gun licensing scheme after Court granted certiorari rendered case moot with respect to claims for declaratory and injunctive relief challenging old licensing scheme); *League of Women Voters of Florida, Inc. v. Florida Secretary of State*, 66 F.4th 905, 949-49 (11th Cir. 2023) (parties agreed that legislature's repeal of registration-disclaimer provision after appeal was filed rendered appeal moot); *Democratic Executive Committee of Florida v. National Republican Senatorial Committee*, 950 F.3d 790, 792, 793 (11th Cir. 2020) (parties agreed that case was moot in light of changes to signature-match provisions in mail-in-voting and provisional voter laws made after court denied emergency motion to stay preliminary injunction); *Hand*, 946 F.3d at 1275 (parties

agreed that changes to re-enfranchisement system for convicted felons after oral argument on appeal rendered case moot). *See also Holloway v. City of Virginia Beach*, 42 F.4th 266, 270, 272 (4th Cir. 2022) (case rendered moot when legislature passed law eliminating challenged at-law voting system for most seats on city council).

B. The General Assembly Repealed Challenged Map and Adopted Enacted Map Without a Final Ruling on the Merits as to Constitutionality of Challenged Map

Notwithstanding the case law discussed above, Plaintiffs likely will contend that the legislature's enactment of a remedial redistricting map to replace a redistricting map held to be unconstitutional does not render a case moot. However, this is only the case after a court has issued a final decision on the merits. Here, the Court did not "hold" that the challenged map was unconstitutional, rather it held preliminarily that the "Plaintiffs demonstrate a substantial likelihood of success on the merits of their racial gerrymandering claim". (Doc. 212 at 32).

For example, in *Covington v. North Carolina*, 283 F. Supp. 3d 410 (M.D.N.C. 2016), *aff'd in part, rev'd in part*, 585 U.S. 969 (2018), the court held that the legislature's enactment of a remedial redistricting map after it had invalidated the previous map after a bench trial did not render the case moot. *Id*. at 424. The court

held that it was required to ensure that the remedial map cured the constitutional problems with the redistricting map it had invalidated. *Id*. at 424-25 (citing cases). On appeal, the Supreme Court affirmed this portion of the district court's ruling and held that, "*in the remedial posture in which this case is presented*, the plaintiffs' claims that they were organized into legislative districts on the basis of their race did not become moot simply because the General Assembly drew new district lines around them." *Id*. at 976 (emphasis added).

However, *Covington* was in a materially different procedural posture than this case. In *Covington*, the court already had issued its *final* determination on the merits holding that the challenged districts were unconstitutional racial gerrymanders.[1] Moreover, the court relied on cases that also had made a *final* determination on the merits that the challenged redistricting map or other statute was unlawful. *Covington*, 283 F. Supp.3d at 424-25 (citing cases). *See also Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp.3d 1136, 1378-1381 (N.D. Ga. 2023) (concluding after bench trial that Congressional and state legislative districts

[1] On August 11, 2016, after a five-day bench trial, the court issued an opinion holding that 27 challenged state senate and state house districts were unlawful racial gerrymanders. *Covington v. North Carolina*, 316 F.R.D. 117, 124, 129, 131-176 (M.D.N.C. 2016). However, the court declined to immediately enjoin the use of these gerrymandered districts because the general election was less than three months away. *Id.* at 176-77. Nevertheless, the court ordered the legislature to draw remedial districts in the next legislative session for use in the 2018 election cycle. *Id*. at 177-78. On June 30, 2017, the Supreme Court summarily affirmed the court's ruling. *North Carolina v. Covington*, 581 U.S. 1015 (2017).

violated Voting Rights Act, entering final judgment in favor of plaintiffs and setting forth process for court review of remedial maps); *Whitest v. Crisp County School District*, 601 F. Supp.3d 1338, 1341, 1348 (M.D. Ga. 2022) (approving remedial map after court had granted summary judgment in favor of plaintiffs after defendants had conceded liability under Voting Rights Act).

In this case, the Court issued a preliminary injunction with respect to the Challenged Map. It is axiomatic, however, that a preliminary injunction is *not* a final ruling on the merits of the case. "Indeed, the very idea of a preliminary injunction is premised on the need for speedy and urgent action to protect a plaintiffs' rights *before a case can be resolved on its merits*." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016) (citing cases) (emphasis added). *Accord Bethune-Cookman University, Inc. v. Dr. Mary McLeod Bethune National Alumni Assoc.*, 2023 WL 3704912, at *3 (11th Cir. May 30, 2023); *Berber v. Wells Fargo Bank, N.A.*, 760 F. App'x 684, 687 (11th Cir. 2019). *See also United States v. Lambert*, 695 F.2d 536, 539-40 (11th Cir. 1983) (purpose of preliminary injunction is "to preserve the relative positions of the parties *until a trial on the merits can be held*") (citing *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)) (emphasis added).

Therefore, this case is fundamentally different from those cases considering the appropriate remedy after a final decision on the merits that the then-existing redistricting map was unconstitutional or otherwise unlawful.

C. The Deadline for Undertaking Remedial Proceedings Relating to Preliminary Injunction Has Expired

Plaintiffs may also argue that the case is not moot because, even in the context of a preliminary injunction, a court must decide whether a remedial map cures the likely constitutional violations with the challenged redistricting map. For example, in *Grace, Inc. v. City of Miami*, 684 F.Supp.3d 1285, 1301-1302 (S.D. Fla. 2023)[2] and *Jacksonville Branch of NAACP v. City of Jacksonville*, 2022 WL 17751416, at *10-11 (N.D. Fla. Dec. 19, 2022), *appeal dismissed*, 2023 WL 4161697 (11th Cir. June 6, 2023), the court held that the adoption of a remedial map in response to the grant of a preliminary injunction did not render the case moot.

However, in both cases, the court examined the constitutionality of the remedial map enacted by the city council and adopted a different remedial map *before* the applicable deadline to adopt a map for use during the upcoming election. *Grace*, 684 F. Supp.3d at 1294, 1322 (rejecting proposed interim remedial map adopted by city council as unconstitutional and adopting interim remedial map

[2] The Eleventh Circuit granted the city's motion to stay the remedial map ordered by the court in that case on the ground that the remedial map was ordered too close to the election. *Grace, Inc. v. City of Miami*, 2023 WL 5286232 (11th Cir. Aug. 4, 2023), *application to lift stay denied*, 144 S. Ct. 45 (2023).

proposed by plaintiffs before August 1, 2023 deadline for use in November 2023 election); *Jacksonville Branch*, 2022 WL 17751416, at *1, 13-21 (rejecting proposed interim remedial map adopted by city council as unconstitutional and adopting its own interim remedial map before January 6, 2023 deadline[3] for use in March 2023 election).

In contrast, in this case, the deadline to provide a redistricting map for the BOER to implement for the 2024 election cycle expired on February 9, 2024. (Doc. 220, ¶ 3.) Before then, the Eleventh Circuit stayed the preliminary injunction. (Doc. 227). Accordingly, the BOER implemented the Enacted Map for use during the May 21, 2024 primary elections for seats on the Board, and the Enacted Map will be used for the general election on November 5, 2024. This sequence of events and the current posture of the case do not allow for the implementation of any other map for the upcoming election. Given this posture, there is no longer a remedial process available to Plaintiffs in connection with the preliminary injunction directed at the Challenged Map. *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

Therefore, if Plaintiffs want to challenge the Enacted Map, they must either file a new lawsuit or, if the Court permits, file an amended complaint directed toward the Enacted Map. *See New York State Rifle & Pistol Assoc.*, 140 S. Ct. at 1526

[3] This deadline is set forth in an Eleventh Circuit unpublished opinion denying the city's motion to stay the court's 12/19/22 order. *Jacksonville Branch of NAACP v. City of Jacksonville*, 2023 WL 119425, at *1 (11th Cir. Jan. 6, 2023).

(remanding case "for further proceedings in which the parties may, if necessary, amend their pleadings or develop the record more fully"); *Holloway*, 42 F.4th at 277-78 (remanding with instructions that "the plaintiffs may raise any claims they have against the City's system going forward. The district court then can decide whether the plaintiffs should be permitted to amend their complaint or otherwise develop the record to pursue those claims here, or whether they are better pursued in a new proceeding."); *Grace, Inc. v. City of Miami*, --- F. Supp.3d ---, 2023 WL 7980153, at *5 (S.D. Fla. Nov. 17, 2023) (plaintiffs filed supplemental complaint directed toward remedial map enacted by city after Eleventh Circuit stayed order adopting plaintiffs' proposed remedial map).

CONCLUSION

For all the reasons set forth herein, Plaintiffs' § 1983 racial gerrymandering claim against the Challenged Map is now moot because of the General Assembly's enactment of the Enacted Map and the expiration of the applicable deadlines in connection with the 2024 election cycle. Plaintiffs may pursue any challenges to the Enacted Map via another lawsuit, or if the Court permits, an amended complaint in this case.

/s/ Philip W. Savrin
Philip W. Savrin
Georgia Bar No. 627836
psavrin@fmglaw.com
Jonathan D. Crumly
Georgia Bar No. 199466

jonathan.crumly@fmglaw.com
William H. Buechner, Jr.
Georgia Bar No. 086392
bbuechner@fmglaw.com
Scott Eric Anderson
Georgia Bar No. 105077
scott.anderson@fmglaw.com
P. Michael Freed
Georgia Bar No. 061128
michael.freed@fmglaw.com

Attorneys for
Cobb County School District

FREEMAN MATHIS & GARY, LLP
100 Galleria Parkway, Suite 1600
Atlanta, Georgia 30339-5948
(770) 818-0000 (telephone)
(833)330-3669 (facsimile)

LOCAL RULE 7.1 CERTIFICATION

The undersigned does hereby certify that the foregoing has been prepared with New Times Roman 14-point font in compliance with Local Rule 5.1.

/s/ Philip W. Savrin
Philip W. Savrin
Georgia Bar No. 627836
psavrin@fmglaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically submitted the foregoing to the Clerk of Court using the Court's E-file system, which will automatically send electronic mail notification of such filing to all parties who have appeared in the action.

This 6th day of September, 2024.

FREEMAN MATHIS & GARY, LLP

/s/ Philip W. Savrin
Philip W. Savrin
Georgia Bar No. 627836
psavrin@fmglaw.com

EXHIBIT 1
to Amicus Brief of Cobb County School District Regarding Mootness

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-14186

KAREN FINN,
JULLIAN FORD,
HYLAH DALY,
JENNE DULCIO,
GALEO LATINO COMMUNITY DEVELOPMENT FUND, INC.,
et al.,

Plaintiffs-Appellees.

versus

COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION,
et al.,

Defendants,

COBB COUNTY SCHOOL DISTRICT,

Intervenor-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-02300-ELR

Before BRANCH, LAGOA, and BRASHER, Circuit Judges.

BY THE COURT:

Plaintiffs-Appellees' Emergency Motion to Dissolve This Court's January 19, 2024 Stay Order is DENIED.