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

KAREN FINN, DR. JILLIAN FORD, HYLAH DALY, JENNE DULCIO, GALEO LATINO COMMUNITY DEVELOPMENT FUND, INC., NEW GEORGIA PROJECT ACTION FUND, LEAGUE OF WOMEN VOTERS OF MARIETTA-COBB, and GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC., Plaintiffs, v. COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION and TATE FALL, in her official capacity as Director of the Cobb County Board of Elections and Registration, Defendants.	CIVIL ACTION NO. 1:22-CV-2300-ELR

PLAINTIFFS' REPLY IN SUPPORT OF
CONTINUED JURISDICTION

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INTRODUCTION

The supplemental briefing by proposed Amicus Cobb County School District ("CCSD"), (ECF 249-1) ignores the compelling factual record surrounding SB 338's passage as a remedial map, misconstrues the Court's preliminary injunction ("PI") (ECF 212) and the function of a temporary stay, and fails to meaningfully respond to persuasive case law limiting mootness *only to when the superseding statute removes Plaintiffs' harm*. Adopting these arguments in the redistricting context would trigger an infinity loop of litigation and allow constitutional violations to live in perpetuity.

CCSD's final argument also misunderstands Plaintiffs' position, so let us be clear: Plaintiffs contend that SB 338 was passed to purportedly remedy the 2022 Enacted Plan's likely constitutional violations, and Plaintiffs' harms are left unresolved until this Court can effectuate equitable relief through a complete remedial process, even if that relief occurs after the November 2024 election. Indeed, CCSD's argument that Plaintiffs' injury was addressed by SB 338 actually supports Plaintiffs' mootness analysis: the legislature's discussion about SB 338 so closely mirrored this Court's PI findings that SB 338 cannot be separated from the PI and Plaintiffs' underlying claims regarding the 2022 Enacted Plan. For both equitable and practical reasons, this Court should resume remedial proceedings so Plaintiffs may address the General Assembly's remedial plan.

ARGUMENT

I. THE ELEVENTH CIRCUIT TEMPORARY STAY DOES NOT TRANSFORM SB 338 FROM A REMEDIAL MAP INTO A SEPARATE, SUPERSEDING STATUTE

Wishing to waive away SB 338's lengthy legislative history plainly demonstrating that SB 338 was passed as a remedial map adopted in response to the constitutional infirmities identified in the PI (ECF 246 at 6-9; ECF 248 at 7-8), CCSD argues that the Eleventh Circuit's temporary stay separated SB 338 from the PI, thus allowing SB 338 to stand as a new, isolated redistricting plan. This argument fails.

As Plaintiffs previously argued, the Eleventh Circuit's temporary stay did not alter SB 338's legislative process, the stated intentions of its sponsors, or the focus of public legislative debate on passing a map that remedied the 2022 Enacted Plan's violations as detailed in the PI. (ECF 248 at 7-9.) SB 338 started as a remedial map and was passed and enacted as one. Nothing about the stay changed the character of SB 338. (*See* ECF 248 at 9-10.)

Even were we to set aside this clear factual record, the stay itself had no judicially enforceable impact on SB 338. That is because this Court never ordered the General Assembly to pass a new map, but only gave the legislature the first opportunity to draw one. (PI, ECF 212 at 33.) A temporary stay of the PI therefore did not estop the General Assembly from passing a remedial map. Given that the

temporary stay did not bind the legislature's actions, the stay also could not have had the effect of transforming SB 338 into a wholly new map. This accords with the express intention of the Eleventh Circuit in entering the stay. The only guidance offered in the panel's order was "[t]he stay maintains the status quo *to prevent the dispute from becoming moot*." (ECF 227 at 3 (emphasis added).) That very same stay cannot now be read to require the mooting of the very same dispute, especially where Plaintiffs' harms remain unresolved. *See Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville,* 508 U.S. 656, 661-62 (1993). (*See also* ECF 244 at 6-7; 245-1 at 6; ECF 246 at 11-14.) As such, an ongoing case or controversy exists in this matter, which requires the Court's continued jurisdiction.

II. REMEDIAL OBJECTIONS TO REDISTRICTING PLANS ARE APPROPRIATE FOLLOWING PRELIMINARY RELIEF

Ignoring Plaintiffs' authority (ECF 248 at 10-11) and with no authority of its own, CCSD again asserts that Plaintiffs cannot pursue remedial relief because in some other cases, such relief was entered after a final ruling on the merits. (ECF 249-1 at 4.) But as Plaintiffs have explained, courts retain jurisdiction to oversee remedial proceedings following a preliminary injunction, just as they would with a permanent injunction. (ECF 248 at 10-11.)[1] Any other result would defy precedent and common sense.

[1] CCSD obfuscates once again that *Singleton v. Allen*, 690 F. Supp. 3d 1226, 1226 (N.D. Ala. 2023), was decided following a preliminary injunction, not a permanent

III. FINDING THIS CASE MOOT AND REQUIRING PLAINTIFFS TO REPROVE LIABILITY WOULD THROW PLAINTIFFS' HARM INTO AN INFINITY LOOP

CCSD also mischaracterizes Plaintiffs' arguments with respect to the underlying dispute, and in doing so argues for the "infinity loop" that precedent warns against. (ECF 249-1 at 7-9; *see Singleton v. Allen*, 690 F. Supp. 3d 1226, 1290 n.20, 1292 (N.D. Ala. 2023).) CCSD appears to argue that because the *Singleton* court did not use the "verbiage" of "mootness" when discussing the infinity loop, the analysis is somehow irrelevant. (ECF 249-1 at 5.) However, the language CCSD flags as addressing the "applicable scope of review" in *Singleton*—"whether Plaintiffs were required to re-prove liability for the remedial [map] . . . or only whether the challenged [map] gave black voters a reasonable opportunity to elect the candidate of their choice" (ECF 249-1 at 5)—*is*, in fact, a question of whether or not the case was moot. Reproving liability is exactly what CCSD would require Plaintiffs to do here, against the express command of *Covington v. North Carolina*, 283 F. Supp. 3d 410 (M.D.N.C. 2018) and *Singleton*.[2]

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injunction. That the "court did not consider that a preliminary injunction is not a final ruling on the merits," (ECF 249-1 at 6) only underscores that the distinction is legally irrelevant because a liability finding in either posture requires a remedy.

[2] CCSD also acknowledges that the *Singleton* court independently determined that the case was not mooted by the passage of a remedial map, relying on *Covington*. (ECF 249-1 at 6.) CCSD provides no persuasive explanation as to why a different analysis should apply here.

As Plaintiffs have repeatedly explained, courts have affirmed that plaintiffs need not reprove liability in a remedial posture. Rather, Plaintiffs need only demonstrate, by way of remedial proceedings, that the remedial map does not remedy the constitutional infirmities identified by the Court.[3] *See, e.g.*, *Covington*, 283 F. Supp. 3d at 431 ("In the remedial posture, courts must ensure that a proposed remedial districting plan completely corrects—rather than perpetuates—the defects that rendered the original districts unconstitutional or unlawful."); *Singleton*, 690 F. Supp. 3d at 1288-93 (providing "seven separate and independent reasons" for rejecting "the assertion that the Plaintiffs must reprove [] liability"). Another case relied on by CCSD, *GRACE, Inc. v. City of Miami*, explains this basic law and expressly rejects the same mootness argument raised by CCSD. 702 F. Supp. 3d 1263, 1267-69, 1275 (S.D. Fla. 2023) (explaining that remedial plan that would "replace the Enjoined Plan altogether" does not render case moot).[4] CCSD has no

[3] Contrary to CCSD's assertions, ECF 249-1 at 8-9, Plaintiffs have never asserted that SB 338 remedies the violations present in the enjoined map. Moreover, CCSD is trying to have it both ways, arguing on one hand that SB 338 is not a remedial map, and on the other hand that it remedies the infirmities identified in the PI. CCSD's argument and the out-of-context excerpt from a legislative hearing (which does not even state the name of the speaker) does nothing other than further confirm that the General Assembly passed SB 338 as a remedial map in response to the PI.

[4] CCSD is correct that following a stay granted by the Eleventh Circuit, Plaintiffs in *GRACE* filed a *supplemental* complaint—not a new case—to allege that challenged districts continued to be racially gerrymandered. 702 F. Supp. 3d at 1272. As the court repeatedly emphasized, Plaintiffs were not required to file a new case challenging the new map, because the remedial map did not moot their claims. *Id.* at 1267-69, 1275 ("as a substantive matter, Defendant's mootness argument is

basis from which to argue that the remedial map resets the case back to square one on an initial finding of liability. *Singleton*, 690 F. Supp. 3d at 1287 ("When, as here, a jurisdiction enacts a remedial plan after a liability finding, 'it [i]s correct for the court to ask whether the replacement system . . . would remedy the violation. . . . '[T]here [i]s no need for the court to view [the remedial plan] as if it had emerged from thin air.'") (quoting *Harper v. City of Chicago Heights*, 223 F.3d 593, 599 (7th Cir. 2000)).

By demanding that Plaintiffs establish liability anew in the remedial context, CCSD is arguing for a procedure that has been roundly rejected by the courts.

IV. THIS COURT HAS CONTINUED JURISDICTION TO EFFECTUATE RELIEF FOR PLAINTIFFS, EVEN AFTER THE 2024 ELECTIONS

Plaintiffs are acutely aware of the challenges of implementing redistricting plan changes close to an election and why the law frowns upon court intervention when an election is imminent. (*See, e.g.*, ECF 48 at 3, 9; ECF 54 at 2 n.2; ECF 157 at 6-7; 180 at 3-4; ECF 194-1 at 54-58.) Consistent with Plaintiffs' position regarding the 2024 election cycle deadlines (ECF 180 at 3-4; ECF 220), Plaintiffs no longer seek relief before the November 2024 election. But that timing concession necessitated by litigation delays mostly out of Plaintiffs' control does not affect the

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incorrect . . . . The Remedial Plan does not render this Action Moot."). Unlike in *GRACE*, CCSD would have Plaintiffs here start over from scratch before the Court has evaluated the General Assembly's remedial plan.

mootness analysis. Indeed, remedial proceedings remain necessary, as they may be the basis for other relief, including the holding of a special election. *See, e.g.*, *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 361 F. Supp. 3d 1296, 1296 (M.D. Ga. 2018), *aff'd* 979 F.3d 1282 (11th Cir. 2020) (concluding that a special election should be held following the approval of new maps).

Plaintiffs seek relief through this Court's ordered remedial process for the continued harm they experience as a result of the same racial gerrymandering claim first asserted more than two years ago. In fact, that CCSD now appreciates these implementation deadlines—having stalled resolution of this litigation with repeated non-party appeals and non-party motions, all of which were dismissed for lack of standing—strongly *supports* Plaintiffs' request for equitable relief as soon as possible post-November 2024 election.

CONCLUSION

For the foregoing reasons, the Court should find continuing jurisdiction and set a schedule for resolution.

DATED this 18th day of September, 2024.

Respectfully Submitted,

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CERTIFICATION OF COMPLIANCE

Pursuant to Local Rule 7.1, the undersigned counsel hereby certifies that this document has been prepared with one of the font and point selections approved by the Court in Local Rule 5.1.

Respectfully submitted this 18th day of September, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record in this case.

Respectfully submitted this 18th day of September, 2024.

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