

**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 IN RESPONSE TO PLAINTIFFS’ MEMORANDUM
IN SUPPORT OF CONTINUING JURISDICTION**

Cobb County School District (the “District”) files this Amicus Brief in Response to Plaintiffs’ Memorandum in Support of Continuing Jurisdiction.

For the reasons discussed below, Plaintiffs cannot demonstrate that there is an ongoing controversy to challenge a redistricting map that no longer exists as it was superseded by the legislature’s enactment of a newly enacted map while this case was stayed and all pertinent deadlines with respect to the 2024 election cycle have now expired. Moreover, Plaintiffs’ effort to introduce evidence is insufficient to resuscitate their claims.

Accordingly, the case should be dismissed as moot. Alternatively, Plaintiffs would need to amend their pleadings to address the operative map and include the necessary parties.

BACKGROUND

Enacted Map. (*Id.*, p. 7 n.1). On August 20, 2024, the Court instructed the parties to file briefs on the mootness issue raised by the Eleventh Circuit.

II. ARGUMENT AND CITATION OF AUTHORITY

A. The Newly Enacted Map Is Not a Remedial Map

As set forth above, Governor Kemp signed the Newly Enacted Map into law on January 30, 2024 – 11 days *after* the Eleventh Circuit stayed the preliminary injunction. (Doc. 227, 230). Although Plaintiffs contend that the Newly Enacted Map was in response to the Court’s preliminary injunction order (Doc. 246, pp. 2-4), the stay of the injunction meant that the General Assembly was not acting by judicial order. Indeed, the Newly Enacted Map would be in effect even if the preliminary injunction had been set aside. As one of the Eleventh Circuit judges indicated during oral argument, the Newly Enacted Map cannot be considered a remedial map for this reason.¹ Accordingly, the Newly Enacted Map falls under the general rule that a superseding statute enacted while litigation is pending renders the case moot. (*See* Doc. 245-1, pp. 3-5) (citing cases).

Finn v. Cobb County School District, (11th Cir. No. 23-14186 May 14, 2024),

B. Plaintiffs Cannot Establish Jurisdiction Based On Cases Addressing Remedies After a Final Ruling on the Merits

As the District set forth in its amicus brief on mootness (Doc. 245-1, pp. 5-7), Plaintiffs cannot establish continuing jurisdiction based on cases addressing remedial relief after a court has issued a *final* ruling on the merits of a statutory or constitutional challenge to a redistricting scheme. As also discussed in the District’s amicus brief (*id.*, p. 7), it is axiomatic that a ruling on a motion for preliminary injunction is *not* a final ruling on the merits. Thus, Plaintiffs’ reliance on cases that addressed remedial relief after a final ruling on the merits are inapposite. (Doc. 246,

Indeed, no party raised mootness in *Singleton*; instead, the court stated in a footnote that the new Congressional redistricting map did not render the case moot because of its duty to ensure that a remedial map cured the constitutional violation. *Singleton*, 690 F. Supp. 3d at 1290 n. 20. The court did not consider that a preliminary injunction is not a final ruling on the merits; moreover, the case was

Court to pursue any such challenge to the Newly Enacted Map in a timely manner so that it may be resolved in ample time for the 2026 election cycle.²

D. Plaintiffs May Not Keep This (Moot) Case Alive by Resorting to New Legal Theories to Argue That the Newly Enacted Map Has the Same Constitutional Problems as the Challenged Map

Plaintiffs contend that the Newly Enacted Map does not render the case moot because it supposedly involves the same dispute as to whether the VRA justified the map-drawing. (Doc. 246, pp. 5-6). In support, Plaintiffs rely on statements by a single senator, Senator Setzler, regarding the purported need to retain a majority-black district in District 3 to comply with the VRA. (*Id.*). As a threshold matter, Plaintiffs improperly conflate the merits of a potential challenge to the Newly Enacted Map with the current mootness inquiry. Indeed, the legislative comments

preliminary injunction. The preliminary injunction was premised on the preliminary conclusion, without a hearing, testimony or opportunity for cross-examination, that the *map-drawer* for the Challenged Map, Bryan Tyson, drew District 3 as a majority-black district to comply with the VRA without conducting the required functional analysis. (Doc. 212, pp. 16-17, 21-26). This was due in no small part to Plaintiffs' focus on the alleged racial motives of *Mr. Tyson* as the decisive factor as to whether

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 Newly Enacted Map and the expiration of the applicable deadlines in connection with the 2024 election cycle.

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[5D=&field_oral_argument_date_value%5Bmax%5D](#), at 10:54-12:22, 47-56). Similarly, the District's Notice of Supplemental Authority filed with the Eleventh Circuit on February 27, 2024 asserted that the *appeal* was not moot. *Finn, et al. v. Cobb County Board of Elections & Registration, et al.*, (11th Cir. No. 23-14186) (Doc. 51 therein). That notice added, "The District questions whether the trial court would have jurisdiction to consider objections to the new map that has been passed by the General Assembly ... because entirely new allegations would need to be made addressed to the General Assembly's actions." (*Id.*).

In any event, since mootness is jurisdictional, the Court must determine for itself whether the case is moot, regardless of the District's position.

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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.

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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 13th day of September, 2024.

FREEMAN MATHIS & GARY, LLP

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EXHIBIT 1
to Amicus Brief of Cobb County School
District in Response to Plaintiffs’
Memorandum in Support
of Continuing Jurisdiction

KAREN FINN, ET AL. vs COBB COUNTY SCHOOL DISTRICT
Hearing - Senate Committee on 01/10/2024

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UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CIVIL ACTION FILE NO. 1:22-CV-2300-ELR

KAREN FINN, et al,
Plaintiffs,
v.
COBB COUNTY SCHOOL DISTRICT,
Defendant.
-----/

Senate Committee On State And Local Governmental Operations
January 10, 2024
Excerpt 0:00:00 to 0:38:48

KAREN FINN, ET AL. vs COBB COUNTY SCHOOL DISTRICT
Hearing - Senate Committee on 01/10/2024

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1 The only difference is the City of Kennesaw
2 has an almost noncontiguous area to the east
3 I-75 here that's not contiguous, but it's a
4 real strange connection to the city. So
5 it's -- this is essentially, substantially the
6 same as the previous map.

7 Last few things, Mr. Chairman. The
8 preservation of the core. One of the
9 reapportionment principles is preserving the
10 core of the districts. The 2022 map that's in
11 the courts moved 36 percent of the citizenry
12 of Cobb County into different districts.

13 That was one of the thing the judge
14 raised was that that was a large number that
15 was of concern. In drawing this plan, even
16 though we have population shifts across our
17 county, we lowered the 36 percent relocation
18 of folks from district to district down to 23.
19 So there's a significant drop in that, again,
20 consistent with reapportionment principles.

21 And then lastly, the compactness
22 standard. If you look at these black jagged
23 lines, this is what the compactness looked
24 like of districts before. You can see
25 District 5 before was this. Now District 5 is