

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

KAREN FINN, *et al.*,
Plaintiffs,

-v-

Case No. 1:22-cv-2300-ELR

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

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’

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 When a challenged law is [repealed and replaced], it cannot inflict further injury redressable by declaration or injunction.”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.*,

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*

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

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

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

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

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 deadline³ 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

(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

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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 6th day of September, 2024.

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

In the

COBB COUNTY SCHOOL DISTRICT,

vs. Plaintiff - Appellee.

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

Before BRANCH, LAGOA, and BRASHER, Circuit Judges.

BY THE COURT:

Plaintiff-Appellee's Emergency Motion to Dismiss is Denied.
 Court's Judgment of 1/19/24 is DENIED.