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' MEMORANDUM IN SUPPORT OF

Legislation

Other Authorities

30, 2024, before the PI was stayed, SB 338 was introduced.[1] The General Assembly passed it on January 30, 2024. *See* Ga. S.B. 338 § 1 (2024). Governor Brian Kemp signed the bill into law that same day, and the new School Board redistricting map contained therein—crafted for the stated purpose of addressing this Court's PI—became effective immediately. *See id*. § 2. On August 13, 2024, the Court of Appeals dismissed CCSD's appeal for lack of jurisdiction and returned the matter to this Court for further proceedings. (Opinion of the Court, *In re Cobb Cnty. Sch. Dist.*, No. 23-14186 (11th Cir. Aug. 13, 2024), Doc. 73-1).[2]

ARGUMENT

I. SENATE BILL 338 WAS PASSED AS A PROPOSED REMEDY FOR THIS COURT'S PRELIMINA'iMEiASiASA PRO iGho .44ee.5(iG22Tm(I.)Tj/TT3 1I

judge on the 14th of December of 2023."[3] Sen. Setzler also acknowledged the remedial timeline ordered by this Court as "an important message that we needed to act upon this promptly."[4] When Sen. Setzler spoke to the House Intragovernmental Coordination Committee, he argued SB 338 "addresses the issues raised in the federal court order," and takes "the specifics of [the PI] and implements that in the plan that you see before you."[5] He told a news outlet that SB 338 "was very carefully crafted to comply with the order of the judge[.]"[6] He explained that SB 338's configuration responded to "that issue of … what percentage of Black voters are moved from one district to another district, what percentage of Hispanic voters are moved from one district to another, white voters and so forth[,]"[7] a dynamic the PI focused on. (PI at 18-21.) He also argued SB 338 took into account "the provisions of the judge's order and the reinforcement principles of compactness, core retention,

census defined areas, and it's a map I think we can all be very proud of."[8]

Other legislators confirmed this intention, such as Sen. John Albers, who noted legislators were "working together to create something that met the order by the court."[9] Even legislators who opposed the proposed map, did so in the context of PI compliance: Sen. Jason Esteves argued that "the proposal in [SB 338] violates the clear provisions of the federal court order[,]"[10] and Rep.

racial gerrymander that packed Black and Latinx voters. According to Sen. Setzler, the General Assembly "had an obligation under the Voting Rights Act to maintain a majority-Black district in the southwest of the county. That has been maintained[.]"[12] Sen. Setzler again said in a different hearing that "[a]s we're required by the Voting Rights Act, [SB 338] maintains District 3 which is a minority Black school board district … as a majority Black district of the Voting Rights Act."[13] Opponents of SB 338, like Sen. Esteves, argued SB 338 "does not remedy the identified violations of the Voting Rights Act or the federal Constitution. [SB 338] continues the packing of Black and brown voters in Cobb County[.]"[14]

Disputes over compliance with the Voting Rights Act and the Fourteenth Amendment, the heart of Plaintiffs' injury, persist with the passage of SB 338 and findings from this Court are still needed to resolve this issue.

II. REDISTRICTING CASES DO NOT CONCLUDE UNTIL A MAP THAT REMEDIES ALL VIOLATIONS IN PLACE FOR FUTURE ELECTIONS

A. Redistricting Cases Require Remedial Proceedings to Ensure Violations Are Fully Addressed

Liability determinations are not the end of the case, but require remedial proceedings to ensure that the liability is resolved rather than perpetuated. When a

[12] *See supra* note 5, at 25:21.
[13] *See supra* note 3, at 49:19.

violation is found by a federal court in a redistricting case, the legislature or political subdivision is typically provided the first chance to remedy that violation. *Wise v. Lipscomb*, 437 U.S. 535, 542-43 (1978). That here the General Assembly availed itself of the opportunity to do so while there was a temporary stay—not a permanent stay or a reversal—of the PI and its deadlines does not change the character or context of the legislative act nor render this case moot. This Court must still determine whether SB 338 remedies the constitutional violations identified in the PI. When "the districting plan is offered as a replacement for one invalidated by the court[,] … the court has an independent duty to assess its constitutionality[.]" *Wilson v. Jones*, 130 F. Supp. 2d 1315, 1322 (S.D. Ala. 2000), *aff'd sub nom. Wilson v. Minor*, 220 F.3d 1297 (11th Cir. 2000). "In the remedial posture, courts must ensure that a proposed remedial plan completely corrects—rather than perpetuates—the defects that rendered the original districts unconstitutional or unlawful." *Covington v. North Carolina*, 283 F. Supp. 3d at 431.

Accordingly, in *North Carolina v. Covington*, the Supreme Court rejected the North Carolina legislature's argument that plaintiffs' racial gerrymandering claims had become moot by the passage of a remedial plan. Rebuffing this logic, the Court 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

insignificant respect.") (emphasis in original). This scenario epitomizes the settled exception to mootness: an action that is capable of repetition but incapable of review. *Ne. Fla. Chapter*, 508 U.S. at 662.

Under the circumstances of this case—where the new map is enacted after a judicial finding that the old map was likely unconstitutional—whether SB 338 was enacted before, during, or after the temporary stay of this Court's PI has no bearing on(e)-4.5 8(sta)1p5 0 1137e1ao hS0 -2.2911 TD (ndeh.5 (h)56.00-04c 0 Tw6.5348 0 Td( )Tj-0.0 thepnar(e)3.5 (s(a)12.1 (n)8.3 dt)8.7 (th)8.3 (is C)12.9 (o)8.3 (ur)365 (t)8.7 (i)8.5 (st)8.5 o (t)

DATED this 6th day of September, 2024.

Respectfully Submitted,

/s/ Pichaya Poy Winichakul
Bradley E. Heard (Ga. Bar No. 342209)
Pichaya Poy Winichakul (Ga. Bar No. 246858)
Michael Tafelski (Ga. Bar No. 507007)
Sabrina S. Khan*
Courtney O'Donnell (Ga. Bar No. 164720)
SOUTHERN POVERTY LAW CENTER
150 E. Ponce de Leon Ave., Suite 340
Decatur, Georgia 30030
(404) 521

Ezra D. Rosenberg*

Counsel for Plaintiff League of Women Voters Marietta-Cobb

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 6th day of September, 2024.

/s/ Pichaya Poy Winichakul
Pichaya Poy Winichakul (Ga. Bar No. 246858)
SOUTHERN POVERTY LAW CENTER
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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 6th day of September, 2024.

/s/ Pichaya Poy Winichakul