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

KAREN FINN, et al.,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	1:22-CV-02300-ELR
	*	
COBB COUNTY BOARD OF ELECTIONS AND REGISTRATION, et al.,	*	
	*	
Defendants.	*	
	*	

O R D E R

Presently before the Court are former Defendant Cobb County School Districtôs ñMotion for Sanctions Under Rule 11ò [Doc. 92] and Plaintiffsô ñMotion for a Preliminary Injunction.ò[1] [Doc. 194]. The Court sets out its reasoning and conclusions below.

I. Background

Because Plaintiffsô instant motion is unopposed by Defendants, the facts that follow reflect Plaintiffsô representations and recitation, it is currently proceeding as an amicus

and has filed an amicus brief in opposition to Plaintiffsô motion for preliminary injunction. [See, e.g., Docs. 191, 200, 201, 202].

1, 194-1]. As the Court has detailed in previous Orders, this case stems from Plaintiffsô allegation that the map enacted by the Georgia General Assembly during the 2022 Legislative Session to elect members to the Cobb County School District Board (the ñEnacted Mapò) represents a racial gerrymander in violation of Plaintiffsô rights pursuant to the Equal Protection Clause of the Fourteenth Amendment. See generally Am. Compl. [Doc. 37]; [see also Docs. 136, 199, 201].

According to Plaintiffsð whose account of the facts stands unrebutted by Defendantsð the Enacted Map was intentionally designed to ñmanipulate[] the population of Cobb County predominantly on the basis of raceò so as to ñprevent the possibilityò that voters of color might elect a majority of the seven (7)-member Cobb County School District Board. [See Doc. 194-1 at 1, 3]. In particular, Plaintiffs explain how the

at

Scamihorn, as Mr. Scamihorn apparently communicated with Mr. Tyson through a

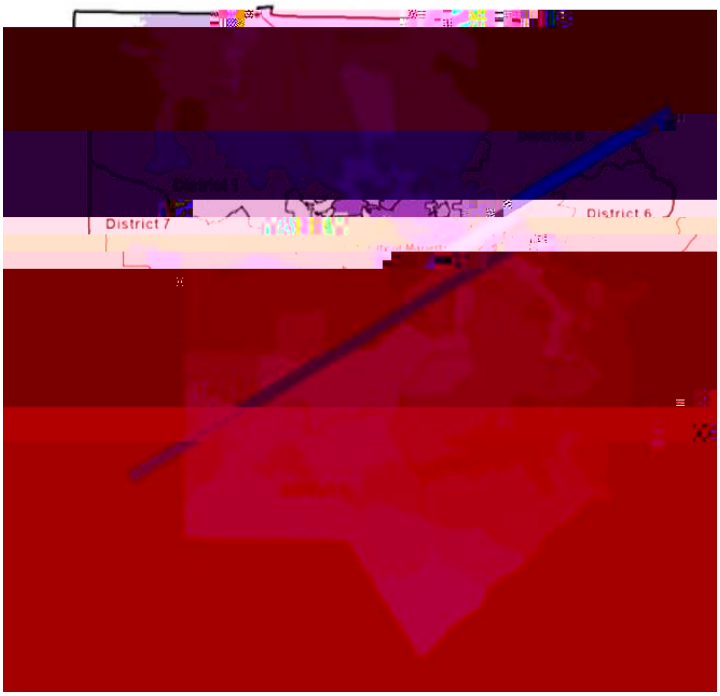
Assembly as House Bill 1028 (ñHB 1028ò) only differed from the draft map Mr. Scamihorn submitted in that it included minor technical changes to correct discrepancies. [Id.] According to Plaintiffs:

> To ensure the mapôs passage, Rep. [Ginny] Ehrhart guided HB 1028 through an unusual legislative path, first sidestepping the customary approvals of Cobb County legislatorsð the majority of whom are Black or Black-preferred candidatesð and then avoiding assignment to the usual committees for county-level redistricting legislation. With limited opportunities for public comment, the House adopted HB 1028 on February 14, 2022, the Senate did the same on February 24, 2022, and Governor Kemp signed HB 1028 into law as Act 561 effective March 2, 2022.

[Id. at 9] (internal citations omitted).

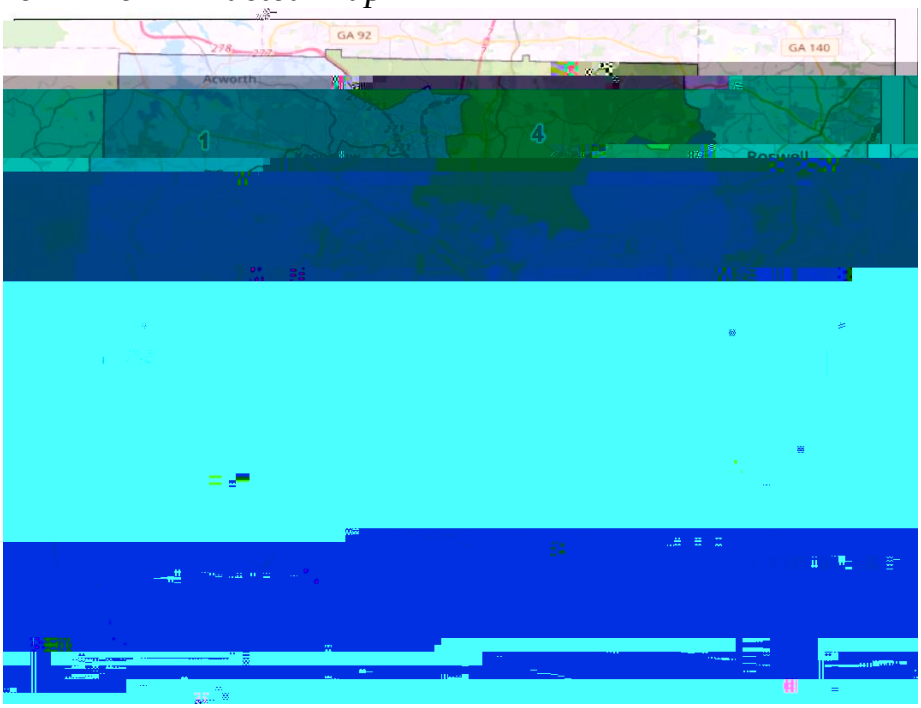
Plaintiffs object to the Enacted Map passed as HB 1028 on the basis that it ñpacks Black and Latinx voters into the three southern districts (giving them Black and Latinx populations of 63.4%, 77.2%, and 49.97%, respectively) and bleaches the population of the northern districts (giving them white populations of 58.22%, 65.56%, 67.24%, and 58.17%, respectively).ò [Id. at 11]. The following visual representations of the 2012 Map and the Enacted Map from 2022 (labeled Figures 1 and 2, respectively) demonstrate how the voting districts were rotated clockwise to shift Districts 2, 3, and 6 (the ñChallenged Districtsò) toward the southern half of Cobb County, where more voters of color live, whereas Districts 1, 4, 5, and 7 were shifted northward to capture more white voters while shedding non-white voter populations. [See id. at 9ï 10].

Figure 1 2012 Map



See Am. Compl. ¶ 158.

Figure 2 2022 Enacted Map



See id.; [see also Doc. 194-1 at 10].

ñdue to the wholesale absence of legal grounds to support P

to file an amicus brief opposing Plaintiffsô motion for preliminary injunction. [See Docs. 197, 201].

Plaintiffs filed their instant ñMotion for a Preliminary Injunctionò (the ñPI motionò) on October 23, 2023. [Doc. 194]. The School District filed its amicus brief in opposition. [Doc. 202]. The only remaining Defendants in this actionð the Election Defendantsð do not oppose Plaintiffsô PI motion.[5] [See Docs. 190 at 2ï 3; 190-1 ¶¶ 2ï 5; 193 at 2]. Having been fully briefed, Plaintiffsô PI motion and the School Districtôs motion for Rule 11 sanctions are ripe for the Courtôs review. [Docs. 92, 194]. The Court begins with Plaintiffsô PI motion.

III. Motion for Preliminary Injunction

In their PI motion, Plaintiffs request that the Court (1) enjoin Defendants from ñconducting any future elections usingò the Enacted Map and (2) allow the Georgia General Assembly ñthe first opportunity to draw a new mapò for this Courtôs approval pursuant to the Partiesô Stipulated Settlement Agreement. [See Doc. 194-1 at 52ï 53, 52 n.32]. Plaintiffs seek for ñan interim remedial map [to] be adopted by January 22, 2024, wellu (0) (223.85 Tdi/6i1]0534.003 6053.500048)7.999 (d)v.003 (u)-27.99

Countyôs election administration and to mitigate voter confusion.ò [Id. at 53]. Should the Georgia General Assembly fail to present a new map that ñmeet[s] the Courtôs approval,ò Plaintiffs request that the Court supervise the creation and implementation ñof an interim remedial mapò with ñinput from the Parties regarding any such interim remedial map.ò [See id. at 52 n.32]. Below, the Court sets forth the legal standard that governs motions for preliminary injunction.

A. Legal Standard

A preliminary injunction is an ñextraordinary and drastic remedy not to be granted unless the movant clearly establishe[s] . . . each of . . . fourò elements. See Siegel v. LePore, 234 F.3d 1163, 1176 (11th Cir. 2000) (cleaned up). A plaintiff seeking a preliminary injunction must demonstrate that: (1) there is a substantial likelihood it will succeed on the merits of its claims; (2) it will suffer irreparable injury if it does not receive preliminary injunctive relief; (3) the threatened injury to it outweighs any harm the requested preliminary injunctive relief would inflict on the nonmoving party; and (4) the entry of preliminary injunctive relief would serve the public interest. See, e.g., KH Outdoor, LLC v. City of Trussville, 458 F.3d 1261, 1268 (11th Cir. 2006). ñThe third and fourth factors merge when, as here, the [g]overnment is the opposing party.ò Gonzalez v. Governor of Ga., 978 F.3d 1266, 1271 (11th Cir. 2020) (internal quotation marks and citation omitted).

Against this framework, courts engage in a two (2)-step analysis ñ[w]hen a

See Tyson Dep. at 98:9ï 21. Mr. Tyson drew District 3 as the single-race or ñmajority [B]lackò district because he determined it could be drawn to include a population of more than fifty percent (50%) Black (or African-American) voters. See id. at 99:1ï 3, 102:9ï 16. Mr. Tyson drew two (2) other ñmajority nonwhite districtsòð specifically, Districts 2 and 6ð and testified that he ñbelieve[s] any of

580 U.S. at 189 (internal quotation marks and citation omitted). And, importantly, the Supreme Court has

> consistently described a claim of racial gerrymandering as a claim that race was improperly used in the drawing of the boundaries of one or more specific electoral districts. And Millerôs basic predominance test scrutinizes the legislatureôs motivation for placing a significant number of voters within or without a particular district. Courts evaluating racial predominance therefore should not divorce any portion of the linesð whatever their relationship to traditional principlesð from the rest of the district.

See id. at 191ï92 (cleaned up) (quoting Ala. Leg. Black Caucus, 575 U.S. at 262ï63 and Miller, 515 U.S., at 916). Here, the bounda (u)3t 792ndb er

Though the remaining two districts did not reflect this same pattern, they were also manipulated based on racial demographics. District 1

102:9ï 16. Although Mr. Tyson testified that he drew District 3 as a majority Black

904. Therefore, the Court proceeds to the second step of the racial gerrymandering analysisð whether the use of race in creating each district of the Enacted Map was narrowly tailored to achieve a compelling interest. See id.

b. Narrowly tailored to achieve a compelling interest

During the second step of the racial gerrymandering analysis, ñthe burden shifts to the defendant to ódemonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.ôò Bethune-Hill, 580 U.S. at 193 (quoting Miller, 515 U.S. at 920). And while it ñhas long [been] assumed that one compelling interest is complying with operative provisions of the [VRA,]ò a defendant ñmust show (to meet the narrow tailoring requirement) that it had a strong basis in evidence for concluding that the statute required its actionò or otherwise ñestablish that it had good reasons to think that it would transgress the [VRA] if it did not draw race-based district lines.ò See Cooper, 581 U.S.

basisôthat the Enacted [Map] was narrowly tailored to comply with the VRA.ò[9] [See Doc. 194-1 at 43].

the electoral behavior within the particular . . . election districtô to determine the proportion of minority voters nee

Districts 2 and 6 were majority white[.]ò [See Doc. 194-1 at 40]. Thus, Plaintiffs argue ñ[t]he addition of more voters of colorò in the Challenged Districts ñwas . . . not necessary to comply with the VRA[,]ò and, based on the uncontroverted evidence presented, the Court agrees. [See id. at 43]. Defendants do not dispute that the Enacted Map ñsimply packs an unnecessarily large proportion of voters of color into south Cobb to limit their influence elsewhere in the countyò and that the ñarbitrary racial quotasò Mr. Tyson used constitute ñracial gerrymandering that cannot satisfy strict scrutiny.ò [Id.]

The Court cannot ñapprove a racial gerrymander whose necessity is supported by no evidence and whose *raison diêtre* is a legal mistake.ò See Cooper, 581 U.S. at 306. Here, Defendants offer no evidence to contradict that VRA compliance was any more than a pretextual reason to justify the changes instituted by the Enacted Map. They do not show that they ñhad a strong basis in evidence for concluding that the [VRA] requiredò the challenged redistricting or otherwise ñestablish that [they] had good reasons to think that [they] would transgress the [VRA] if [they] did not draw race-based district lines.ò See id. at 292ï 93 (internal quotation marks omitted) (citing Ala. Legis. Black Caucus, 575 U.S. at 278). Thus, it is substantially unlikely that Defendants could demonstrate that the Enacted Map was ñnarrowly tailoredò to achieve a ñcompelling interestò so as to survive strict scrutiny review. Id.

Therefore, Plaintiffs satisfy both prongs of the racial gerrymandering analysis, and accordingly, demonstrate a substantial likelihood of success on their claim. See Schiavo, 403 F.3d at 1232.

2. Irreparable harm

Having determined that Plaintiff is likely to succeed on the merits of its claim, the Court turns to whether Plaintiffs will suffer irreparable injuries if no injunction issues. See KH Outdoor, 458 F.3d at 1268. ñA showing of irreparable harm is the *sine qua non* of injunctive relief.ò Ne. Fla. Chapter of Assôn of Gen. Contractors of Am. v. City of Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990).

> An injury is ñirreparableò only if it cannot be undone through monetary remedies. The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time[,] and energy necessarily expended in the absence of a[n injunction], are not enough. [Additionally, t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course

3. Balance of harms and public interest

ñThe third and fourth factorsò of the preliminary injunction analysis ñmerge when, as here, the [g]overnment is the opposing party.ò Gonzalez, 978 F.3d at 1271 (internal quotation marks and citation omitted). ñThe third elementò of that analysis ñlooks to óthe competing claims of injury,ôrequiring the court to óconsider the effect on each party of the granting or withholding of the requested relief.ôò De La Fuente v. Merrill, 214 F. Supp. 3d 1241, 1249 (M.D. Ala. 2016) (quoting Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008)). In evaluating the fourth element of a plaintiffôs request for a preliminary injunction, the court ñlooks to the effect of an injunction on the public interest[.]ò See id. This analysis ñcommands courts to give óparticular regard for the public consequences in employing the extraordinary remedy of injunction.ôò Id. (quoting Winter, 555 U.S. at 24).

Here, the Court has found that the Enacted Map is substantially likely to be an unconstitutional racial gerrymander. The ñpublic has no interest in enforcing unconstitutional redistricting plans,ò and the Court will not ñrequire the residents ofò Cobb County ñto live for the next [several] years in districts defined by a map that is substantially likely to be unconstitutional.ò See Jacksonville Branch of NAACP v. City of Jacksonville, No. 22-13544, 2022 WL 16754389, at *5 (11th Cir. Nov. 7, 2022). Moreover, Election Defendants have already entered into a proposed Stipulated Settlement Agreement with Plaintiffs to facilitate, through the Georgia

General Assembly, the redrawing of the Enacted Map. [See Doc. 190-1]. Therefore, it appears that no harm will come to Defendants if the Court grants Plaintiffsô requested injunction. See De La Fuente, 214 F. Supp. 3d at 1249. Accordingly, the Court finds that Plaintiffs satisfy the third and fourth factors of the preliminary injunction analysis. See KH Outdoor, 458 F.3d at 1268.

4. Security

The final issue for the Court to decide is whether it will require Plaintiff to post any security pursuant to Federal Rule of Civil Procedure 65(c). That rule provides that a district ñcourt may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.ò FED. R. CIV. P. 65(c). However, ñit is well-established that the amount of security required by the rule is a matter within the discretion of the trial court, and the court may elect to require no security at all.ò See BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC, 425 F.3d 964, 971 (11th Cir. 2005) (cleaned up). Here, the Court finds it appropriate to waive the Rule 65 bond requirement because Defendants have not requested that Plaintiffs post any such bond if an injunction issues. See SisterSong Women of Color Reprod. Just. Collective v. Kemp, 410 F. Supp. 3d 1327, 1350 (N.D. Ga. 2019) (waiving the bond requirement ñin the absence of a request from [the d]efendantsò). Further, because

the Parties have already arranged for their proposed Stipulated Settlement Agreement to take effect following the issuance of this order, the Court finds this type of security unnecessary. [See Doc. 190-1].

likelihood of success on the merits of their racial gerrymandering claim pursuant to

[redacted]

Finally, the Court **DENIES** the School Districtôs ñMotion for Sanctions Under Rule 11.ò [Doc. 92] t22.999 0 0TJ ET Q q 0 0 612 792 re W* n BT /TT0 14.04l2 re WU8 Q q 0 0 6