

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

KAREN FINN, DR. JILLIAN FORD,  
HYLAH DALY, JENNE DULCIO,





## **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*

## 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 onl 25.735 08.2 (.)-13 g (.)



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



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.

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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