

**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  
JANINE EVELER, in her official capacity  
as Director of the Cobb County Board of  
Elections and Registration,

Defendants.

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

**PLAINTIFFS' RESPONSE IN OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS**

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Chart Riggall, *Lawsuit Alleging Racial Bias Challenges Cobb School Board Map's Constitutionality*, MARIETTA DAILY JOURNAL, GA. (June 9, 2022), <https://www.mdjonline.com/news/education/lawsuit-alleging-racial-bias-challenges-cobb-school-board-map-s-constitutionality/article-30191456-e820-11ec-9e65-270b435a7962.html>.....10

Steven S. Gensler & Lumen N. Mulligan, *Federal Rules of Civil Procedure, Rules and Commentary Highlights § 19* (2022 ed.)



Georgia” or the winners of the “primary elections in two of the challenged districts” or the Georgia legislators who passed HB 1028—is wrong.

In Georgia, county election boards, and their directors, implement and enforce the election code. Under this authority, Defendants’ acts of implementing and enforcing HB 1028 cause the injuries that P



## ARGUMENT

### I. PLAINTIFFS HAVE ARTICLE III STANDING

Plaintiffs' injuries are traceable to and redressable by a judgment against Defendants. Article III standing requires (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

Defendants do not contest that Plaintiffs have suffered an injury-in-fact. Instead, Defendants argue that Plaintiffs “have not plead [sic] any allegation that the [] Defendants played any role in creating, evaluating, accepting, rejecting, or otherwise exercising any control over the district maps or the redistricting process.” (Def. Br. at 11.) So, according to Defendants, “Plaintiffs have failed to articulate in their Amended Complaint how their claimed injuries are traceable to and redressable by the [] Defendants.” (*Id.* at 12.) Defendants are wrong.

*First*, with respect to traceability, the Complaint details how binding Georgia law *requires* Defendants to implement and enforce the Challenged Districts in Cobb County. (Compl. ¶¶ 147–55.) In particular, O.C.G.A. § 21-2-70 directly delegates to Defendants the powers and duties to administer primaries and elections. For example, directors “select and equip polling places for use in primaries and elections,” *id.* § 21-2-70(4), and “determine the sufficiency of nomination petitions,”

*id.* § 21-2-70(2). Thus, because Defendants implement and enforce HB 1028 under Georgia law, Plaintiffs' injuries are fairly traceable to Defendants.

Notably, Defendants do not contest that they administer election laws in Cobb County. (*See* Def. Br. at 9 (acknowledging that the Cobb County Board of Elections and Registration is the entity "through which the allegedly discriminatory maps will be implemented").) Defendants, however, argue that "Plaintiffs must show that [] Defendants have some type of control over the creation or use of the injurious maps." (*Id.* at 12.) That is not the law.

To begin,

*Second*, Plaintiffs have established redressability. As shown above, Defendants bear the legal duty of implementing and enforcing HB 1028. The crux of Plaintiffs' action is to stop the implementation and enforcement of this racial gerrymander. (Compl. ¶¶ 11, 22, 27, 34, 39, 183.) Thus, an injunction against Defendants preventing the enforcement of HB 1028 would redress Plaintiffs' injuries. That is all Plaintiffs must show. *See Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1126–

mentioned by Defendants—the Georgia legislature and the Board of Education (Def. Br. at 9)—that lack the “authority” to administer Georgia’s election laws. As a result, under a plain reading of *Jacobson*, Plaintiffs’ alleged injuries are traceable to and redressable by a judgment against Defendants.<sup>1</sup>

Similarly, *Scott v. DeKalb County Board*

and thus voting-rights plaintiffs' injuries are "'fairly traceable' not to the acts of the State Legislators, but to the acts of the Board of Elections, even though the Board of Elections has no discretion in their implementation of the district lines." *Id.* at \*13. Even so, the court held that the plaintiff's alleged injury had become "moot," because they related to the plaintiff's candidacy for an already-held election, and the amended complaint failed to "mention [] how [the] Defendant's continued use of the allegedly unconstitutional district lines injures Plaintiff." *Id.* at \*14. The court thus could "grant [the] Plaintiff no relief." *Id.*

Unlike the plaintiff in *Scott*, Plaintiffs here are neither incumbent candidates nor seeking relief that could only be granted in an election that has already taken place. To the contrary, Plaintiffs, voters in the Challenged Districts and voting rights organizations, are seeking relief before the 2024 elections. (Compl. ¶¶ 16–41, 183.) Plaintiffs are thus proceeding precisely as instructed by the Eleventh Circuit: naming Defendants that Plaintiffs can obtain "prospective relief" against and

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Rule 19 “sets out two steps for determining whether a party must be joined as indispensable.” *Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1039 (11th Cir. 2014). Only the first step is relevant here: “whether the person in question is one who should be joined” under Rule 19(a). *Id.* (citations omitted).

Defendants’ arguments with respect to Rule 19(a)(1) conflict with controlling precedent. *First*, no third party has asserted an interest in this action, so Defendants may not assert such an interest on a non-party’s behalf. *Second*, Defendants are not at risk of inconsistent obligations because Defendants are not subject to a conflicting court order.<sup>3</sup> Accordingly, this action may proceed without joining further parties...C /P12.4/ (n

A defendant may only “seek



any claim of a legally-protected interest yet, this Court may not infer such an interest, and Defendants’ suggestion that the State of Georgia, the School Board, or the individual candidates are the proper parties to be joined in this action is foreclosed.

Moreover, Defendants’ argument that “Plaintiffs deprive the Court of [] ‘concrete adverseness’” (Def. Br. at 15 (citations omitted)), shows a fundamental misunderstanding of civil rights actions. Voting rights actions like this one are often—especially in redistricting cases—brought against so-called “neutral” parties because those are the state entities entrusted with enforcement powers under law. *See, e.g., Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282 (11th Cir. 2020) (not questioning the plaintiff’s decision to name the local Board of Elections as the sole defendant). To that end, multiple federal Courts of Appeals have recognized the “run-of-the mill” nature of civil rights actions against “neutral” enforcement agencies. *E.g., Consumers Union of U.S., Inc. v. Va. State Bar*, 688 F.2d 218, 222 (4th Cir. 1982); *Hastert v. Ill. State Bd. of Election Comm’rs*, 28 F.3d

1430, 1444 (7th Cir. 1993) (explaining that “liability [is] usually imposed on a neutral (and nominal) defendant” in “redistricting cases”).<sup>5</sup>

Thus, under well-settled precedent, no other parties need to be joined in this action.<sup>6</sup>

**B. Defendants Are Not Subject to a Substantial Risk of Incurring Inconsistent Obligations**

Defendants also argue that Plaintiffs’ action subjects them to “inconsistent obligations.” (Def. Br. at 17.) According to Defendants, those inconsistent obligations emanate from either abiding by an order from this Court or abiding by the “duty to run elections using the maps adopted by the State Legislature and signed

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<sup>5</sup> See also *Venuti v. Riordan*, 702 F.2d 6, 8 (1st Cir. 1983) (“Indeed, civil rights action costs (including attorney’s fees) are often assessed against defendants who enforce the laws instead of those who enact them. The legislature is rarely sued.”); *In re Kan. Cong. Dists. Reapportionment Cases*, 745 F.2d 610, 612 (10th Cir. 1984) (similar).

<sup>6</sup> If Defendants feel so strongly that other parties should be joined as defendants, they are free to try to join them. See Fed. R. Civ. P. 20. That said, Plaintiffs seek to move efficiently towards resolution ahead of the 2024 elections and naming unnecessary parties further delays swift resolution of this action. Cf. *Scott*, 405 F.3d at 1252 (dismissing a voting-rights claim against Georgia state legislators because “the state legislators are entitled to absolute legislative immunity”); *Trump*, 511 F. Supp. 3d at 1332–34 (holding that the plaintiff lacked standing to assert its election-related claims against Georgia’s Governor and Secretary of State).

into law by the Governor.” (*Id.*) That argument is also foreclosed by controlling precedent.

Federal courts narrowly interpret the concept of “inconsistent obligations” from Rule 19(a)(1)(B)(ii). Specifically, “[i]nconsistent obligations occur when a party is unable to comply with one court’s order without breaching another court’s order concerning the same incident.” *Winn-Dixie Stores, Inc., LLC*, 746 F.3d at 1040 (quotation marks omitted); *see also* Steven S. Gensler & Lumen N. Mulligan, *Federal Rules of Civil Procedure, Rules and Commentary Highlights § 19* (2022 ed.) (“To be an inconsistent obligation, a party must be unable to comply with one court’s order without breaching Tj0.004 Tc 0.06( )]TJ7nte ywi coSte/8e b b v(te)12Hig8.5 (s)ith § 19r5

(stating that the defendant’s “hypothetical scenario” failed to meet Rule 19(a)’s requirement that defendants face a “‘**substantial risk**’ of multiple, inconsistent obligations” (emphasis added)).

Under Defendants’ theory, an executive agency could never be a named defendant without the legislature being named as well. Such agencies are always subject to a “duty” to carry out laws “adopted by the [] Legislature and signed into law by the” executive. So Defendants’ argument, if taken to its logical conclusion, would entirely foreclose the established practice of suing executive agencies.

Thus, as a matter of law, Defendants are not at risk of inconsistent obligations.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs have shown that Defendants’ theory is not only legally untenable, but also contrary to the established practice of suing executive agencies.



Jon Greenbaum\*  
Ezra D. Rosenberg\*  
Julie M. Houk\*  
Sofia Fernandez Gold\*†  
LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW  
1500 K Street, Suite 900  
Washington, DC 20005  
(202) 662-8600  
jgreenbaum@lawyerscommittee.org  
erosenberg@lawyerscommittee.org  
jhouk@lawyerscommittee.org  
sfgold@lawyerscommittee.org

Douglas I. Koff\*  
Thomas L. Mott\*  
Paul Schochet\*  
Savannah Price\*  
Matthew J. Sunday\*  
SCHULTE ROTH & ZABEL LLP  
919 Third Avenue  
New York, New York 10022  
(212) 756-2000  
Douglas.Koff@srz.com  
Thomas.Mott@srz.com  
Paul.Schochet@srz.com  
Savannah.Price@srz.com  
Matthew.Sunday@srz.com

\* Admitted Pro Hac Vice

† Admitted in New York only. Practice limited to matters before federal courts.



**CERTIFICATE OF COMPLIANCE**

The undersigned counsel



**CERTIFICATE OF SERVICE**