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 District's "Motion for Sanctions Under Rule 11" [Doc. 92] and Plaintiffs' "Motion for a Preliminary Injunction."[1] [Doc. 194]. The Court sets out its reasoning and conclusions below.

I. Background

Because Plaintiffs' instant motion is unopposed by Defendants, the facts that follow reflect Plaintiffs' representations and record evidence. [See, e.g., Docs. 190-

[1] Although the Cobb County School District (the "School District") is no longer a Party to this action, it is currently proceeding as an amicus and has filed an amicus brief in opposition to Plaintiffs' 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 Plaintiffs' 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 "Enacted Map") represents a racial gerrymander in violation of Plaintiffs' 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 Plaintiffs—whose account of the facts stands unrebutted by Defendants—the Enacted Map was intentionally designed to "manipulate[] the population of Cobb County predominantly on the basis of race" so as to "prevent the possibility" 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 "racial diversification of Cobb County accelerated substantially between the 2010 and 2020 Censuses[,]" which was "fueled primarily by Black and Latinx population growth" as "the white population . . . declined[.]" [See id. at 3–4]. The census data required Cobb County to draw new voting districts for electing its School District Board members in light of these population changes.[2] [See id.

[2] The United States Census Bureau conducts a census every ten (10) years. See About the Decennial Census of Population and Housing, U.S. CENSUS BUREAU (December 10, 2023), https://www.census.gov/programs-surveys/decennial-census/about.html. Following the 2010 census, a map was drawn to elect members to the Cobb County School District Board and that map was enacted in 2012 (the "2012 Map"). See Am. Compl. ¶ 158; [see also Doc. 136 at 7]. The 2012 Map was used to elect members to the Cobb County School District Board until the Enacted Map at issue replaced it in 2022 following the 2020 census. [See Docs. 136 at 7; 194-1 at 4].

at 4]. Following the 2018 elections, the School District Board was comprised of four (4) white members and three (3) non-white members (the latter of whom were the preferred candidates of Black and Latinx voters). [See id. at 3–4].

The redistricting process began in May 2021 when the School District Board Chair at the time, Randy Scamihorn, met with a small group of individuals, including former Georgia State Representative Earl Ehrhart and Bryan Tyson of the firm Taylor English Duma LLP ("Taylor English"), to discuss a potential contract with Taylor English for drawing redistricting maps that would be used to elect the members of Cobb County School District Board. [See id. at 6]; see also Deposition of Bryan Tyson ("Tyson Dep.") at 15:8–24 [Doc. 194-12]. Mr. Scamihorn "brought the issue of redistricting to" the full School District Board for the first time nearly two (2) months later, during July 2021. [See Doc. 194-1 at 6]. Mr. Scamihorn did not mention the possibility of retaining Taylor English for the redistricting work to the non-white members of the Board until the next meeting on August 19, 2021 (although it is unclear whether the white Board members were informed in advance), and the Taylor English contract was approved over the non-white members' objections that same day. [Id. at 6–7].

Between August 2021 and December 2021, Mr. Tyson worked on drawing the redistricting maps while meeting or speaking with the members of the School District Board individually. [Id. at 7]. He did not, however, meet again with Mr.

Scamihorn, as Mr. Scamihorn apparently communicated with Mr. Tyson through a School District employee named Andy Steinhauser as a "go-between" because Mr. Scamihorn wanted to keep "his hands off" the maps. [Id.] Mr. Tyson submitted three (3) draft maps to the full School District Board for collective consideration on December 6, 2021, including one version "created for" Mr. Scamihorn. [Id. at 7–8]. However, the School District Board did not release any of the three (3) draft maps to the public for comment until 8:00 p.m. on December 8, 2021, the night before the School District Board's next meeting. [Id.] At the Board's December 9, 2021 meeting, the three (3) non-white Board members voted against the draft map created by Mr. Tyson for Mr. Scamihorn, but the four (4) white Board members (including Mr. Scamihorn) voted to approve it, and the majority vote prevailed. [Id. at 8].

"Georgia law requires any plan to revise districts for existing county-level offices to either be drawn or submitted and certified by the Legislative and Congressional Reapportionment Office of the General Assembly." [Id. at 8 n.7] (citing O.C.G.A. § 28-1-14.1(b)(1)). "As a result, the map approved by the School Board's white majority in December 2021 was transmitted to the Georgia General Assembly for final legislative action and enactment." [Id.] Specifically, Mr. Scamihorn contacted current Georgia State Representative Ginny Ehrhart (who is married to former Georgia State Representative Earl Ehrhart) to ask her to sponsor the proposed map as legislation. [Id.] The map presented to the Georgia General

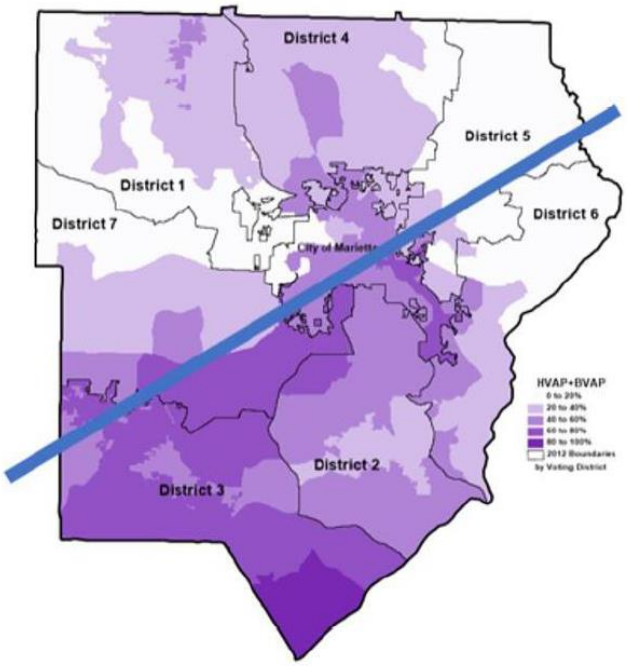
Assembly as House Bill 1028 ("HB 1028") only differed from the draft map Mr. Scamihorn submitted in that it included minor technical changes to correct discrepancies. [Id.] According to Plaintiffs:

> To ensure the map's passage, Rep. [Ginny] Ehrhart guided HB 1028 through an unusual legislative path, first sidestepping the customary approvals of Cobb County legislators—the majority of whom are Black or Black-preferred candidates—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).

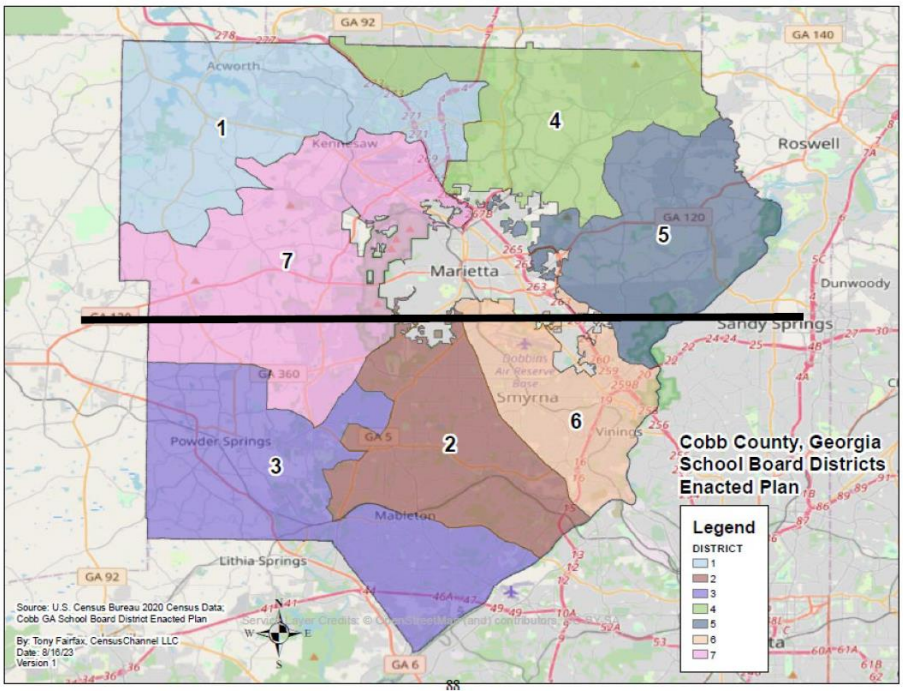
Plaintiffs object to the Enacted Map passed as HB 1028 on the basis that it "packs Black and Latinx voters into the three southern districts (giving them Black and Latinx populations of 63.4%, 77.2%, and 49.97%, respectively) and bleaches the population of the northern districts (giving them white populations of 58.22%, 65.56%, 67.24%, and 58.17%, respectively)." [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 "Challenged Districts") 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 9–10].

Figure 1 – 2012 Map



See Am. Compl. ¶ 158.

Figure 2 – 2022 Enacted Map



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

II. Procedural History[3]

On June 9, 2022, Plaintiffs Karen Finn; Dr. Jullian 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. initiated this action against Defendants Cobb County Board of Elections and Registration and the Director of the Cobb County Board of Elections and Registration in his or her official capacity (currently Gerry Miller, who serves as the as Interim Director) (together, the "Election Defendants"). See Compl. [Doc. 1]; see also Am. Compl. Thereafter, on December 19, 2022, the non-party School District filed a "Motion to Intervene," in which it "request[ed] that it be permitted to intervene and join th[is case] as a defendant to protect its interests in the subject matter of the case." [Doc. 52 at 1–2]. By an Order dated January 30, 2023, with the consent of all Parties, the Court granted the School District's motion to intervene as a Party Defendant in this case.[4] [Doc. 60].

On April 28, 2023, while it was still a Party Defendant, the School District filed a "Motion for Sanctions Under Rule 11" seeking sanctions against Plaintiffs

[3] For additional procedural history not recited herein, the Court refers to its Orders dated July 18, 2023; November 2, 2023; and November 8, 2023. [Docs. 136, 199, 201].

[4] Because the Parties consented to the School District's intervention in this matter, the Court did not rule on the question of whether the School District was entitled to permissive intervention versus intervention as a matter of right pursuant to Federal Rule of Civil Procedure Rule 24. [See Docs. 54, 55, 60].

"due to the wholesale absence of legal grounds to support Plaintiffs' claims in this case." [See Doc. 92 at 1]. Plaintiffs oppose that motion. [Doc. 102].

Additionally, the Election Defendants moved to dismiss Plaintiffs' Amended Complaint and the School District moved for judgment on the pleadings as to the same. [See Docs. 43, 83]. By an Order dated July 18, 2023, the undersigned denied in part and denied as moot in part the Election Defendants' motion to dismiss and granted the School District's motion for judgment on the pleadings. [See Doc. 136 at 34–35]. After the Court's July 18, 2023 Order granting judgment on the pleadings in the School District's favor, the School District lost its status as a Party Defendant and became a non-party. [See Docs. 136, 199].

On October 15, 2023, Plaintiffs and the only remaining Defendants—the Election Defendants—filed an executed "Stipulated Settlement Agreement" setting forth their plan to resolve this case by having the Georgia General Assembly draw a new map to replace the Enacted Map. [See Doc. 190-1]. Unhappy with the Election Defendants' decision to settle with Plaintiffs, on October 17, 2023, the School District submitted a "Motion for Leave to File Amicus Brief in Response to Plaintiffs' Motion for Preliminary Injunction" and a corresponding motion to supplement that contained its proposed amicus brief. [See Docs. 191, 200, 200-1]. Over Plaintiffs' objection, the Court granted the School District's motion for leave

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

Plaintiffs filed their instant "Motion for a Preliminary Injunction" (the "PI motion") on October 23, 2023. [Doc. 194]. The School District filed its amicus brief in opposition. [Doc. 202]. The only remaining Defendants in this action—the Election Defendants—do not oppose Plaintiffs' PI motion.[5] [See Docs. 190 at 2–3; 190-1 ¶¶ 2–5; 193 at 2]. Having been fully briefed, Plaintiffs' PI motion and the School District's motion for Rule 11 sanctions are ripe for the Court's review. [Docs. 92, 194]. The Court begins with Plaintiffs' PI motion.

III. Plaintiffs' Motion for Preliminary Injunction

In their PI motion, Plaintiffs request that the Court (1) enjoin Defendants from "conducting any future elections using" the Enacted Map and (2) allow the Georgia General Assembly "the first opportunity to draw a new map" for this Court's approval pursuant to the Parties' Stipulated Settlement Agreement. [See Doc. 194-1 at 52–53, 52 n.32]. Plaintiffs seek for "an interim remedial map [to] be adopted by January 22, 2024, well in advance of the 2024 elections to avoid hardship to Cobb

[5] The Parties stipulated not to request a hearing on Plaintiffs' PI motion because Defendants do not oppose the motion. [See Doc. 190-1 ¶¶ 2–3]. Further, Defendants agreed "not [to] file any further dispositive motions in this action, including but not limited to any [m]otions for [s]ummary [j]udgment"; "not [to] file a response to any other motions by third parties . . . including but not limited to any [m]otions for [s]ummary [j]udgment, [m]otions for [r]econsideration, or [m]otions to [i]ntervene"; and "waive[d] any right to appeal or to seek a motion to stay or modify any order entered by the" Court in this action. [See id. ¶¶ 8–10, 12].

County's election administration and to mitigate voter confusion." [Id. at 53]. Should the Georgia General Assembly fail to present a new map that "meet[s] the Court's approval," Plaintiffs request that the Court supervise the creation and implementation "of an interim remedial map" with "input from the Parties regarding any such interim remedial map." [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 "extraordinary and drastic remedy not to be granted unless the movant clearly establishe[s] . . . each of . . . four" 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). "The third and fourth factors merge when, as here, the [g]overnment is the opposing party." Gonzalez v. Governor of Ga., 978 F.3d 1266, 1271 (11th Cir. 2020) (internal quotation marks and citation omitted).

"To carry its burden" as to each element, "a plaintiff seeking a preliminary injunction must offer proof beyond unverified allegations in the pleadings[.]" Palmer v. Braun, 155 F. Supp. 2d 1327, 1331 (M.D. Fla. 2001). "[A]t the preliminary injunction stage, a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction[] if the evidence is 'appropriate given the character and objectives of the injunctive proceeding.'" Rubin v. Young, 373 F. Supp. 3d 1347, 1351 (N.D. Ga. 2019) (quoting Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995)); accord Imagine Medispa, LLC v. Transformations, Inc., 999 F. Supp. 2d 862, 869 (S.D.W. Va. 2014) (collecting cases in support of this proposition). "The district court has substantial discretion in weighing the four relevant factors to determine whether preliminary injunctive relief is warranted." Gonzalez, 978 F.3d at 1271 n.13 (quoting Solantic, LLC v. City of Neptune Beach, 410 F.3d 1250, 1254 n.4 (11th Cir. 2005)); cf. Trump v. Int'l Refugee Assistance Project, 582 U.S. 571, 580 (2017) ("The purpose of" granting a preliminary injunction "is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward."). Therefore, the decision of whether to grant a preliminary injunction "is within the sound discretion of the district court and will not be disturbed absent a clear abuse of discretion." See Int'l Cosms. Exch., Inc. v.

Gapardis Health & Beauty, Inc., 303 F.3d 1242, 1246 (11th Cir. 2002) (internal quotation marks omitted) (quoting Palmer, 287 F.3d at 1329).

B. Discussion

Having set forth the pertinent legal standard, the Court next evaluates the merits of Plaintiffs' instant PI motion and discusses whether it will require Plaintiffs to post any security bond pursuant to Rule 65(c). [Doc. 194]. As relevant here, the sole count Plaintiffs allege in their Amended Complaint is a Section 1983 claim against the Election Defendants on the basis that HB 1028 constitutes racial gerrymandering in violation of the Equal Protection Clause of the Fourteenth Amendment. See Am. Compl. ¶¶ 178–82.

1. Likelihood of success on the merits

The first element a plaintiff must establish to be entitled to preliminary injunctive relief—that it is likely to succeed on the merits of its claims—is "generally [considered] the most important" of the four (4) elements. See Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1232 (11th Cir. 2005). To establish "[a] substantial likelihood of success on the merits[,]" a plaintiff need only show it is "likely or probable" that it will succeed on the merits of its claims; a plaintiff need not show that it will "certain[ly]" succeed. See id. As the Supreme Court instructs:

> The Equal Protection Clause of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., [amend. XIV], § 1. Its central mandate is racial neutrality in governmental decision[-]making. See,

> e.g., Loving v. Virginia, 388 U.S. 1, 11[] (1967); McLaughlin v. Florida, 379 U.S. 184, 191–192 [] (1964); see also Brown v. [Bd.] of [Educ.], 347 U.S. 483 [] (1954). Though application of this imperative raises difficult questions, the basic principle is straightforward: "Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination . . . . This perception of racial and ethnic distinctions is rooted in our Nation's constitutional and demographic history." Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 291 [] (1978)[.]

Miller v. Johnson, 515 U.S. 900, 904 (1995). The Supreme Court further holds that "[l]aws classifying citizens on the basis of race cannot be upheld unless they are narrowly tailored to achieving a compelling state interest." Id. (collecting cases). As relevant to electoral redistricting (or gerrymandering) cases like the matter at bar, the Supreme Court has explained that the Equal Protection Clause prohibits not only "explicit racial classifications" such as "laws that explicitly distinguish between individuals on racial grounds[,]" but also laws that are "neutral on their face but unexplainable on grounds other than race." Id. at 905 (internal quotation marks omitted) (quoting Shaw v. Reno, 509 U.S. 630, 642, 644 (1993)).

In assessing a challenge to a redistricting plan, courts must be mindful that state legislatures "have discretion to exercise the political judgment necessary to balance competing interests." Id. at 915. Thus, analysis of the instant claim begins with a presumption of "good faith of a state legislature[,]" unless or until Plaintiffs "make a showing sufficient to support [the] allegation" that race predominated the redistricting decisions at issue. Id. at 915–16.

Against this framework, courts engage in a two (2)-step analysis "[w]hen a voter sues state officials for drawing such race-based lines[.]"[6] Cooper v. Harris, 581 U.S. 285, 291 (2017). First, Plaintiffs must demonstrate, "either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." Miller, 515 U.S. at 916.

> To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations. Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a State can "defeat a claim that a district has been gerrymandered on racial lines."

Id. at 916–17 (quoting Shaw, 515 U.S. at 647)). A plaintiff may succeed on this first step of the analysis "even if the evidence reveals that a legislature elevated race to the predominant criterion in order to advance other goals, including political ones." See Cooper, 581 U.S. at 291 (internal citations omitted); see also Bush v. Vera, 517 U.S. 952, 968–970 (1996) (plurality opinion) (holding that race predominated when a legislature deliberately "spread[ ] the Black population" among several districts in

[6] Although the principles underlying the above two (2)-step analysis for a gerrymandering claim "inform [a] plaintiff's burden of proof at trial[,]" the Court bears them in mind "when assessing under the Federal Rules of Civil Procedure the adequacy of" Plaintiffs' claim "at the [instant] stage[] of litigation" and in "determining whether to permit . . . trial to proceed." See Miller, 515 U.S. at 916–17 (internal citations omitted).

an effort to "protect[ ] Democratic incumbents"). And "even when a reapportionment plan respects traditional principles," a court may still find that race was the predominant motivating factor if race was treated as "the criterion that, in the [s]tate's view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made." Bethune-Hill v. Va. State Bd. of Elections, 580 U.S. 178, 189 (internal quotation marks and citation omitted).

Second, "[w]here a challenger succeeds in establishing racial predominance, the burden shifts to the [defendant] to 'demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.'" Id. at 193 (quoting Miller, 515 U.S. at 920). Although it "has long [been] assumed that one compelling interest is complying with operative provisions of the Voting Rights Act of 1965[,]" if a defendant offers compliance with the Voting Rights Act ("VRA") as the justification for the challenged redistricting, the defendant "must show (to meet the narrow tailoring requirement) that it had a strong basis in evidence for concluding that the statute required its action" or otherwise "establish that it had good reasons to think that it would transgress the [VRA] if it did not draw race-based district lines." See Cooper, 581 U.S. at 292–93 (internal quotation marks omitted) (citing Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254, 278 (2015)). Because Plaintiffs must

demonstrate their substantial likelihood of success as to both prongs of the two (2) this analysis, the Court examines each prong in turn.

a. Race as the predominating motivating factor

As to the first prong of the analysis, Plaintiffs must demonstrate "that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district[,]" whether "through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose[.]" Miller, 515 U.S. at 916. Plaintiffs contend—and Defendants do not dispute—that record evidence supports that race was the predominant factor used to craft the Enacted Map in violation of the Equal Protection Clause. [See Doc. 194-1 at 21]. Regarding evidence of legislative purpose, Plaintiffs argue that "the express statements of the map drawers" demonstrate "that a racial target was their overriding consideration" in creating the Enacted Map. [See id. at 23]. In support, Plaintiffs cite to the deposition of Bryan Tyson, the Taylor English attorney who drew the Enacted Map. [Id.] During his deposition, Mr. Tyson testified:

> [I]f you're a jurisdiction drawing a plan, the best way to avoid liability is to draw a single[-]race district if there's racially polarized voting. As we've discussed, there is polarized voting Georgia. . . . [G]iven that, statistically, there would be an indication of racially polarized voting, the best plan for a jurisdiction to avoid liability under [S]ection [T]wo [of the VRA] is to draw a majority [B]lack district, if you can draw one, which we could in Cobb County.

See Tyson Dep. at 98:9–21. Mr. Tyson drew District 3 as the single-race or "majority [B]lack" 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 99:1–3, 102:9–16. Mr. Tyson drew two (2) other "majority nonwhite districts"—specifically, Districts 2 and 6—and testified that he "believe[s] any of those could be viewed as [VRA-]compliant districts." See id. 95:7–11. Additionally, Mr. Tyson "looked at several ways to move" Mr. Chastain—an incumbent white Board member—"into District 4"—a majority white district—without "compromis[ing] the political performance of Districts 1 and 7 in the process[,]" with Districts 1 and 7 also being majority white districts.[7] See id. at 117:8–23, 146:5–18. The Parties do not dispute that the Enacted Map (1) moved "both Black and Latino voters" out of Districts 1, 4, 5, and 7 and (2) simultaneously increased the percentage of white voters in those same Districts. [See Doc. 194-3 ¶ 72].

The Court finds that this evidence supports that race was the predominant motivating factor behind the Enacted Map because race was treated as "the criterion that, in the [s]tate's view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made." Bethune-Hill,

[7] It is unclear from Plaintiffs' motion whether Mr. Chastain was ever elected in a different district than District 4, as the above-quoted language suggests, or whether Mr. Tyson was attempting to preserve Mr. Chastain's eligibility to run for election in District 4. [See, e.g., Doc. 194-1].

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 Miller's basic predominance test scrutinizes the legislature's 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 lines—whatever their relationship to traditional principles—from the rest of the district.

See id. at 191–92 (cleaned up) (quoting Ala. Leg. Black Caucus, 575 U.S. at 262–63 and Miller, 515 U.S., at 916). Here, the boundaries of all seven (7) voting districts for electing the members of Cobb County's School District Board shifted, and thus, all seven (7) districts are subject to scrutiny regarding "the legislature's motivation for placing a significant number of voters within or without a particular district." See id.

Mr. Tyson's testimony and the corresponding statistical evidence strongly suggest that race was used as the predominating factor or as an impermissible proxy because the resulting Enacted Map shored up the percentage of white voters in Districts 1, 4, 5, and 7 (which had thus far only elected white Board members) while

reducing the number of Black and Latinx voters in the same districts.[8] See Miller, 515 U.S. at 914; [see also Doc. 194-3 ¶¶ 109–13, Table 7]; Declaration of Charisse Davis ¶¶ 4, 26 [Doc. 194-24]. For example, Plaintiffs offer the opinion of an expert witness, Anthony E. Fairfax, in support of their claim. [See generally Doc. 194-3]. In their PI motion, Plaintiffs summarize Mr. Fairfax's findings as follows:

> The Enacted [Map]'s configuration was achieved by adding and removing substantial population[s] to each district according to racial makeup, resulting in both packed white districts and packed districts of color. Through a clockwise rotation of the map, every northern district added areas with more white people than Black and Latinx people and every southern district, save for District 3, removed areas with more white people than Black and Latinx people. In effect, the [Enacted M]ap passes Black and Latinx voters southward from District 7 to Districts 3, 2, and 6 and passes white voters northward from District 6 to Districts 5, 4, 1, and 7. All told, this rotation moved over 250,000 people—more than 35% of the county's total population—into new districts.

[See Doc. 194-1 at 19–20] (citing Doc. 194-3 ¶¶ 14(b), 50, 52, Figs. 1–2). Mr. Fairfax's expert report further explains:

> [T]wo of the three districts with a population greater than 35% Black saw an increase in Black and Latino population and a decrease in [w]hite population under the Enacted [Map] (Districts 2 and 6). And three of the four districts with a population less than 25% Black saw a decrease in Black and Latino population and an increase in [w]hite population (Districts 4, 5, and 7[)].

[8] "It is true that redistricting in most cases will implicate a political calculus in which various interests compete for recognition, but it does not follow from this that individuals of the same race share a single political interest." Miller, 515 U.S. at 914. "The view that they do is based on the demeaning notion that members of the defined racial groups ascribe to certain 'minority views' that must be different from those of other citizens, [] the precise use of race as a proxy the Constitution prohibits." See id. (internal quotation marks and citation omitted).

> Though the remaining two districts did not reflect this same pattern, they were also manipulated based on racial demographics. District 1 split Kennesaw, one of Cobb County's cities with the highest Black and Latino population growth from 2010 to 2020. This splitting reduces the impact of the Black and Latino population growth by dividing the city essentially in half and placing it into two different districts (Districts 1 and 7).
>
> The only two districts that did not see major demographic shifts . . ., District 1 and District 3, nonetheless saw major changes. District 1 was reoriented to shed part of the municipality of Kennesaw, which caused the city to be more evenly split between Districts 1 and 7. The other population figures were then balanced out elsewhere in the map, with the effect of ensuring that District 7 would be able to both split Kennesaw and be firmly controlled by [w]hite voters.
>
> Meanwhile, District 3 was reshaped to shift Black and Latino population into District 2, which allowed District 2 to shift [w]hite population into District 7 and further shore up [w]hite voters' control of District 7. The shift from District 3 also allowed District 2 to simultaneously take on Black and Latino population from District 6, which in turn allowed District 6 to take on Black and Latino population from District 5.
>
> . . . [T]he movement of over 250 thousand persons . . . [for] the Enacted [Map] was due to race predominating during plan development. The shifting of population using race added Black and Latino population to select districts to create three districts with significant Black and Latino populations and added [w]hite population to select districts to create four districts with significant [w]hite population. Consequently, race played a dominant role in the configuration of the Enacted [Map].

[Doc. 194-3 ¶¶ 109–13]. In a table, Mr. Fairfax summarizes the changes in racial populations by voting district in the Enacted Map:

Table 7 – Changes in Demographics of School Board Districts for the Benchmark and Enacted Plans for Cobb, GA							
District	**Black %**	**Added**	**Removed**	**Population**	**White**	**Black**	**Latino**
1	<25%	33,485	32,227	1,258	-535	1,862	92
2	>35%	35,816	35,610	206	-7,254	3,310	5,594
3	>35%	12,821	15,541	-2,720	-42	-2,333	-510
4	<25%	38,767	36,346	2,421	9,814	-7,646	-1,485
5	<25%	47,040	43,027	4,013	2,952	-970	-552
6	>35%	42,718	47,040	-4,322	-15,160	9,919	6,012
7	<25%	43,823	44,679	-856	10,225	-4,142	-9,151

[See Doc. 194-3, Table 7]. Defendants do not rebut this evidence.

In essence, Plaintiffs argue that the new boundaries of District 3 created a "claw-shape reaching toward the center of the county" and thus created a "conduit for the packing of the entire southern region[,]" particularly for packing voters of color into Districts 2 and 6. [Doc. 194-1 at 20–21]. The change in District 3's boundaries allowed Districts 2 and 6 "to be rotated further southward to pick up the spillover from District 3 and fully contain the Black and Latinx population in the south of the county[,]"while simultaneously moving white voters northward to Districts 1, 4, 5, and 7. [See id. at 21]; see also Miller, 515 U.S. at 916 (instructing that "circumstantial evidence of a district's shape and demographics" may support a racial gerrymander claim).

Separately, it is undisputed that Mr. Tyson created District 3 using an express "more than 50%" threshold" for the Black voting age population, meaning that "race for its own sake" was likely "the overriding reason for choosing one map over others." Bethune-Hill, 580 U.S. at 190; see also Tyson Dep. at 95:7–11, 99:1–3,

102:9–16. Although Mr. Tyson testified that he drew District 3 as a majority Black district to comply with the VRA, Plaintiffs' undisputed evidence strongly suggests that this reason was merely pretext because Mr. Tyson did not conduct the requisite analysis nor consider the appropriate factors for VRA compliance, as the Court discusses further below. See infra, part III.B.1.b. Indeed, "[t]he racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn, not *post hoc* justifications the legislature in theory could have used but in reality did not." See Bethune-Hill, 580 U.S. at 180–90; see also Tyson Dep. at 99:1–3, 102:9–16; Ala. Legis. Black Caucus, 575 U.S. at 267 (finding that where a state "expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote)[,]" there was "evidence that race motivated the drawing of particular lines in multiple districts in the [s]tate").

In sum, Plaintiffs' evidence supports that the Enacted Map "was carefully tailored to facilitate the packing of minority voters" and that the Challenged Districts (Districts 2, 3, and 6) "and four white-controlled districts (Districts 1, 4, 5, and 7) were made possible by packing the white population in the North and the Black and Latinx population in the South." [See Doc. 194-1 at 23].

The Court finds that this evidence sufficiently demonstrates that race was the predominant motivating factor in creating the Enacted Map. See Miller, 515 U.S. at

904. Therefore, the Court proceeds to the second step of the racial gerrymandering analysis—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, "the burden shifts to the defendant to 'demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.'" Bethune-Hill, 580 U.S. at 193 (quoting Miller, 515 U.S. at 920). And while it "has long [been] assumed that one compelling interest is complying with operative provisions of the [VRA,]" a defendant "must show (to meet the narrow tailoring requirement) that it had a strong basis in evidence for concluding that the statute required its action" or otherwise "establish that it had good reasons to think that it would transgress the [VRA] if it did not draw race-based district lines." See Cooper, 581 U.S. at 292–93 (internal quotation marks omitted) (citing Ala. Legis. Black Caucus, 575 U.S. at 278).

With regard to this factor, Plaintiffs argue that even though Mr. Tyson and the then-Board Chair Scamihorn invoked VRA compliance during the map-making process to justify certain redistricting choices, "the failure of the map drawer to have undertaken the required Gingles analysis or, indeed, any functional analysis of the districts, is conclusive evidence that the map drawer lacked the required 'strong

basis' that the Enacted [Map] was narrowly tailored to comply with the VRA."[9] [See Doc. 194-1 at 43]. The Gingles factors are used to "establish that 'the minority [group] has the potential to elect a representative of its own choice' in a possible district, but that racially polarized voting prevents it from doing so in the district as actually drawn because it is 'submerg[ed] in a larger white voting population.'" See Cooper, 581 U.S. at 302 (quoting Growe v. Emison, 507 U.S. 25, 40 (1993)). As relevant to Mr. Tyson's representations about the "VRA-compliant" Challenged Districts, the VRA is only a viable justification for race-based redistricting where a state "has good reason to think that all the 'Gingles preconditions' are met" such that "it has good reason to believe that § 2 [of the VRA] requires drawing a majority-minority district[,]" but "if not, then not." See id. (quoting Vera, 517 U.S at 978); see also Wis. Legis. v. Wis. Elections Comm'n, 595 U.S. 398, 401 (2022) ("we have held that if race is the predominant factor motivating the placement of voters in or out of a particular district, the [s]tate bears the burden of showing that the design of that district withstands strict scrutiny"). One common way of using racial data to achieve VRA compliance is for a mapmaker to "undertake a 'functional analysis of

[9] In Thornburg v. Gingles, the Supreme Court established "three threshold conditions for proving vote dilution under § 2 of the VRA." See Cooper, 581 U.S. at 301–02 (citing 478 U.S. 30, 50–51 (1986)). These three (3) "Gingles factors" are: (1) a "minority group must be sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district[,]" (2) "the minority group must be politically cohesive[,]" and (3) "a district's white majority must vote sufficiently as a bloc to usually defeat the minority's preferred candidate." See id. (cleaned up) (quoting Gingles, 478 U.S. at 50–51).

the electoral behavior within the particular . . . election district' to determine the proportion of minority voters needed in a district to allow those voters to usually elect their preferred candidates." [See Doc. 194-1 at 38] (quoting Bethune-Hill, 580 U.S. at 194).

Here, it is undisputed that Mr. Tyson neither conducted any functional analysis nor employed the Gingles factors in creating the Enacted Map. [See id. at 39]. In fact, Mr. Tyson testified during his deposition: "I'm not sure I could say directly, you know, I drew this because of the [VRA]. I believe that if we had failed to draw a majority [B]lack district on the Cobb School Board map, the district would face significant possible liability under [S]ection [2] of the [VRA]." See Tyson Dep. at 95:7–11. Further, Mr. Tyson admitted that he had not performed the type of functional analysis required for VRA compliance and instead employed his own definition of "functional analysis," which he characterized as "an analysis of the jurisdiction to determine [if] you can draw additional majority [B]lack districts consistent with districting principles." See id. at 100:4–23. And that type of generalized inquiry "embrac[es] just the sort of uncritical majority-minority district maximization that" the Supreme Court "ha[s] expressly rejected." See Wis. Elections Comm'n, 595 U.S. at 403. For these reasons, Plaintiffs contend that Mr. Tyson lacked any genuine motivation to protect voters of color in the Challenged Districts, who "were already electing Black members to the School Board [] even as

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

The Court cannot "approve a racial gerrymander whose necessity is supported by no evidence and whose *raison diêtre* is a legal mistake." 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 "had a strong basis in evidence for concluding that the [VRA] required" the challenged redistricting or otherwise "establish that [they] had good reasons to think that [they] would transgress the [VRA] if [they] did not draw race-based district lines." See id. at 292–93 (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 "narrowly tailored" to achieve a "compelling interest" 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. "A showing of irreparable harm is the *sine qua non* of injunctive relief." Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990).

> An injury is "irreparable" 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 of litigation, weighs heavily against a claim of irreparable harm.

Id.

In the matter at bar, Plaintiffs argue that they will suffer irreparable harm during the upcoming 2024 elections if the Court does not enjoin the alleged racial gerrymander presented by the current Enacted Map.[10] [See Doc. 194-1 at 46–47].

[10] In their proposed Stipulated Settlement Agreement, the Parties agree that "an order adopting an interim remedial map by January 22, 2024," would provide adequate time for implementation of the new map because that date is "six weeks prior to the beginning of the anticipated candidate qualifying period" for the 2024 Cobb County School District Board elections. [See Doc. 180 at 3].

Such injuries are "neither remote nor speculative, but actual and imminent." Siegel, 234 F.3d at 1176 (internal quotation omitted). As the Supreme Court has explained:

> Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin. Racial classifications with respect to voting carry particular dangers. Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters—a goal that the Fourteenth . . . Amendment[] embod[ies], and to which the Nation continues to aspire.

Shaw, 509 U.S. at 657. If no injunction were to issue prohibiting the use of the Enacted Map, Plaintiffs and their fellow Cobb County voters face the harm of voting in likely racially gerrymandered districts for the county's School Board seats. As another Circuit succinctly stated, "once the election occurs, there can be no do-over and no redress. The injury to these voters is real and completely irreparable if nothing is done to enjoin" the alleged unconstitutional laws or redistricting maps. League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014). Further, in the absence of an injunction, the alleged harm that will imminently befall Plaintiffs and other Cobb County voters "cannot be undone through monetary remedies." Scott v. Roberts, 612 F.3d 1279, 1295 (11th Cir. 2010). Therefore, the Court finds that Plaintiffs satisfy the second factor of the preliminary injunction analysis. See KH Outdoor, 458 F.3d at 1268.

3. Balance of harms and public interest

"The third and fourth factors" of the preliminary injunction analysis "merge when, as here, the [g]overnment is the opposing party." Gonzalez, 978 F.3d at 1271 (internal quotation marks and citation omitted). "The third element" of that analysis "looks to 'the competing claims of injury,' requiring the court to 'consider the effect on each party of the granting or withholding of the requested relief.'" 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 plaintiff's request for a preliminary injunction, the court "looks to the effect of an injunction on the public interest[.]" See id. This analysis "commands courts to give 'particular regard for the public consequences in employing the extraordinary remedy of injunction.'" 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 "public has no interest in enforcing unconstitutional redistricting plans," and the Court will not "require the residents of" Cobb County "to live for the next [several] years in districts defined by a map that is substantially likely to be unconstitutional." 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 Plaintiffs' 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 "court 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." FED. R. CIV. P. 65(c). However, "it 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." 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 "in the absence of a request from [the d]efendants"). 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].

C. Summary

In sum, noting the lack of opposition from Election Defendants, the Court finds that Plaintiffs satisfy their burden to establish all four (4) elements of the preliminary injunction analysis and that no Rule 65(c) bond shall be required at this juncture.

IV. The School District's Motion for Rule 11 Sanctions

The Court now turns to former Defendant (and current amicus) Cobb County School District's motion for Rule 11 sanctions. In that motion, the School District argues that Plaintiffs should be sanctioned "due to the wholesale absence of legal grounds to support Plaintiffs' claims in this case." [Doc. 92 at 1]. The Court begins with the relevant legal standard.

A. Legal Standard

Federal Rule of Civil Procedure 11(b) provides that when an attorney presents a federal court with a pleading, that "attorney . . . certifies that to the best of [his] . . . knowledge, information, and belief, formed after an inquiry reasonable under the circumstances" that "the claims, defenses, and other legal contentions" asserted in the pleading "are warranted by existing law or by a nonfrivolous argument for

extending, modifying, or reversing existing law or for establishing new law." FED R. CIV. P. 11(b). "Once the court determines that Rule 11(b) has been violated, the court 'may impose an appropriate sanction' on the offending party based on a motion filed by the non-offending party." Thomas v. Early Cnty., 518 F. App'x 645, 646 (11th Cir. 2013) (quoting FED. R. CIV. P. 11(c)). "[T]he selection of the type of sanction to be imposed lies with the district court's sound exercise of discretion," however, "the sanctions most commonly imposed are costs and attorney[s'] fees." Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1295 (11th Cir. 2002).

B. Discussion

In the matter at bar, the Court finds that the now-amicus School District fails to meet its burden to demonstrate that Rule 11 sanctions are warranted against Plaintiffs' counsel. It is well-settled that Rule 11 sanctions are only appropriate if a claim is "factually groundless," wholly unsupported by evidence, or where litigants display "deliberate indifference to obvious facts" in such a way that compels a court to "resort to Rule 11 sanctions." See Davis v. Carl, 906 F.2d 533, 536–37 (11th Cir. 1990); see also In re BankAtlantic Bancorp, Inc. Sec. Litig., 851 F. Supp. 2d 1299, 1317 (S.D. Fla. 2011) ("Under Rule 11, a claim is factually frivolous only when it is supported by no evidence or only by 'patently frivolous' evidence."), aff'd sub nom. Hubbard v. BankAtlantic Bancorp, Inc., 503 F. App'x 677 (11th Cir. 2012). For the reasons set forth above, the Court finds that Plaintiffs demonstrate a substantial

likelihood of success on the merits of their racial gerrymandering claim pursuant to the Equal Protection Clause. Accordingly, the Court denies the School District's motion for Rule 11 sanctions. [Doc. 92].

V. Conclusion

For the foregoing reasons and in the absence of any objection from Election Defendants, the Court **GRANTS** Plaintiffs' "Motion for Preliminary Injunction" [Doc. 194] and **DIRECTS** the Parties to facilitate the remedial process outlined in their proposed Stipulated Settlement Agreement.[11] [Doc. 190-1]. Specifically, the Court **DIRECTS** the Parties to adhere to the below schedule (which is largely based upon proposals they made in a filing dated September 22, 2023). [Doc. 180].

Event	Deadline
Period for Georgia General Assembly to adopt a new map	December 18, 2023–January 10, 2024
Last day for Plaintiffs or Defendants to enter objections to the Georgia General Assembly's new map	January 12, 2024
Last day to respond in opposition to another Party's objections	January 17, 2024
Last day to submit any motions for summary judgment *or* to submit consolidated pretrial order pursuant to Local Rule 16.4, NDGa.	April 1, 2024

[11] The Court notes that Defendants have agreed "not [to] file any further dispositive motions in this action, including but not limited to any [m]otions for [s]ummary [j]udgment"; "not [to] file a response to any other motions by third parties . . . including but not limited to any [m]otions for [s]ummary [j]udgment, [m]otions for [r]econsideration, or [m]otions to [i]ntervene"; and "waive[d] any right to appeal or to seek a motion to stay or modify any order entered by the" Court in this action. [See Doc. 190-1 ¶¶ 8–12].

Finally, the Court **DENIES** the School District's "Motion for Sanctions Under Rule 11." [Doc. 92]. The Court **DIRECTS** the Clerk to resubmit this action to the undersigned on January 18, 2024.

SO ORDERED, this 14th day of December, 2023.

Eleanor L. Ross
United States District Judge
Northern District of Georgia