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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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 Plaintiffs allege in the Complaint. Precedent from previous election law and redistricting litigation uniformly confirms this approach. As a result, Defendants are the proper parties to this action.

LEGAL STANDARD

On a motion to dismiss, the Court must "take the facts from the allegations in the complaint, assuming those allegations to be true."

, 363 F.3d 1183, 1186 (11th Cir. 2004). Under Federal Rule of Civil Procedure 12(b)(1), this standard applies to standing allegations.

, 524 F.3d 1229, 1232 (11th Cir. 2008). Rule 12(b)(7) provides for dismissal where a party has not been joined as required "under Rule 19." "The party moving for dismissal pursuant to Rule 12(b)(7) bears the burden of proof." , No. 1:18-CV-1770-TCB, 2018 WL 8949452, at *1 (N.D. Ga. Nov. 9, 2018) (citing , 41 F.3d 1490, 1492 (11th Cir. 1995)).

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. , 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." (at 12.) Defendants are wrong.

, 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," . § 21-2-70(4), and "determine the sufficiency of nomination petitions,"

. § 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. (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." (at 12.) That is not the law.

To begin,

, 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. , 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 , Plaintiffs' alleged injuries are traceable to and redressable by a judgment against Defendants.[1]

Similarly,

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." . 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." . at *14. The court thus could "grant [the] Plaintiff no relief." .

Unlike the plaintiff in , 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 "

Rule 19 "sets out two steps for determining whether a party must be joined as indispensable." , 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). . (citations omitted).

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

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. , , 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. , , 688 F.2d 218, 222 (4th Cir. 1982); , 28 F.3d

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

Thus, under well-settled precedent, no other parties need to be joined in this action.[6]

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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[5] , 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."); , 745 F.2d 610, 612 (10th Cir. 1984) (similar).

[6] If Defendants feel so strongly that other parties should be joined as defendants, they are free to try to join them. 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. , 405 F.3d at 1252 (dismissing a voting-rights claim against Georgia state legislators because "the state legislators are entitled to absolute legislative immunity"); , 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." ( ) 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." , 746 F.3d at 1040 (quotation marks omitted); 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( )]TJ7nteywi 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 hav nn( )8.4 (nTc 0.)12.2 c 0. 2.1 (3.6 (ng s

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CERTIFICATE OF COMPLIANCE

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