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

GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*, *Plaintiffs*, v. FAYETTE COUNTY BOARD OF COMMISSIONERS, *et al.*, *Defendants*.	**CIVIL ACTION NO. 3:11-CV-00123-TCB**

PLAINTIFFS' OPPOSITION TO COUNTY DEFENDANTS' MOTION TO AMEND OR ALTER THIS COURT'S MAY 21 ORDER AND FOR A STAY

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INTRODUCTION

On May 21, 2013, this Court issued an Order (the "Order") denying the Fayette County Board of Commissioners' (the "County Defendants") Motion for Summary Judgment and granting Plaintiffs' Motion for Summary Judgment. Order at 80. Consistent with all relevant case law, this Court held that the at-large method of election in Fayette County (the "County"), in combination with its racially polarized voting, violates Section 2 of the Voting Rights Act. Furthermore, this Court recognized the "undisputed" fact that no Black candidate has ever been elected to the County Board of Commissioners or Board of Education in the County 191-year history. *Id.* at 79. Based on the "heavy weight" of these factors, and having conducted a "searching practical evaluation of the 'past and present reality'" of Fayette County's challenged electoral scheme, the Court concluded that, under the totality of the circumstances, Black voters of Fayette County "have less opportunity than others members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* Recognizing that Black voters in the County are sufficiently large to constitute a majority of the voting-age population in a single-member district ("District 5"), and seeking to remedy the Voting Rights Act violation at issue in this case, the Court ordered the parties to submit proposed remedial plans for the Board of

Commissioners and Board of Education elections by June 25, 2013, just eleven days from the filing of this brief. *Id.* at 80.

County Defendants,[1] having been denied their motion for summary judgment and seeking to perpetuate the County's nearly 200 year tradition of maintaining a racially segregated County government, now urges this Court to stay its Order and to permit it to pursue an interlocutory appeal. However, County Defendants' motion does not meet the threshold requirements for certification for interlocutory appeal, as established in 28 U.S.C. § 1292(b). In particular, the alleged "controlling" questions of law that County Defendants identify as justifying this extraordinary request are without merit.

Moreover, an immediate interlocutory appeal would not streamline this case, as County Defendants argue, Defs.' Br. at 9-10, but would instead prolong it in a piecemeal manner. As explained below, County Defendants' extraordinary request reflects only their steadfast reluctance to comply with this Court's Order, rather than an efficient way to proceed with this litigation.

County Defendants have failed to satisfy the requirements for certifying the Order for interlocutory appeal. Similarly, they have failed to demonstrate a

[1] As this Court recognized, "[t]he School Board Defendants, having conceded the existence of a Section 2 violation, did not participate in discovery or the current [summary judgment] motions." Order at 10.

sufficient basis on which the Court should stay its Order. Accordingly, County Defendants' motion should be denied.

ARGUMENT

I. CERTIFICATION OF INTERLOCUTORY APPEAL UNDER 28 U.S.C. § 1292(b) IS INAPPROPRIATE IN THIS CASE.

Absent exceptional circumstances, only a final judgment of a federal district court—one which "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment"—can be appealed. *See United States v. Garner*, 749 F.2d 281, 285 (5th Cir. 1985) (citation and internal quotation marks omitted). "This final-judgment rule, embodied in 28 U.S.C. § 1291, reflects 'a firm congressional policy against . . . "piecemeal" appeals.'" *S. U.S. Trade Ass'n v. Unidentified Parties*, CIV.A. 10-1669, 2011 WL 2790182, at *2 (E.D. La. July 14, 2011) (quoting *Henry v. Lake Charles Am. Press, LLC*, 566 F.3d 164, 170-71 (5th Cir. 2009)) (citation omitted).

The law governing interlocutory orders, 28 U.S.C. § 1292(b) ("Section 1292(b))[2] permits a district court to certify an interlocutory order for immediate

[2] Section 1292(b) states:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the

appeal only in those "exceptional cases" in which there is "serious doubt as to how [the question] should be decided." *McFarlin v. Conseco Servs., LLC,* 381 F.3d 1251, 1256 (11th Cir. 2004). Exceptional cases are those that involve (1) a "controlling question of law," (2) about which there is "substantial ground for difference of opinion," and (3) the resolution of which may "materially advance the ultimate termination of the litigation." *Id.* at 1257.

This case simply does not present "exceptional" circumstances warranting certification for interlocutory appeal under Section 1292(b). In an attempt to manufacture appropriate bases for such an appeal, County Defendants contend that the Order relies upon the following "four controlling questions of law" about which there is substantial disagreement in case law: (1) whether "the Court used a standard applied a standard [sic] in determining a racial gerrymander different than that outlined in *Miller v. Johnson*, 515 U.S. 900 (1995);" (2) whether "the Court concluded that it never matters whether an illustrative districting plan used to demonstrate the first prong of the *Gingles* test – a sufficiently large and geographically compact minority community – is itself a racial gerrymander;" (3) whether "the Court held that even if Plaintiffs' Illustrative Plan is a racial

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> ultimate termination of the litigation, he shall so state in writing in such order.

28 U.S.C. § 1292(b).

gerrymander, it survives strict scrutiny because it is necessary to avoid Section 2 liability," and, (4) whether "the Court determined that proof of the three *Gingles* factors plus one of the Senate factors (minority electoral success) was sufficient to establish a Section 2 violation." Defs.' Br. at 5-6.

For the reasons explained below, County Defendants' alleged "controlling questions" provide no basis for certification under 28 U.S.C. § 1292(b).

A. No "Controlling Questions of Law" Within the Meaning of 28 U.S.C. § 1292(b) are Involved in This Case.

Controlling questions of law are "pure law," matters which can be decided "quickly and cleanly without having to study the record." *McFarlin*, 381 F.3d at 1258 (citing *Ahrenholz v. Bd. of Trs. of the Univ. of Ill.*, 219 F.3d 674, 677 (7th Cir. 2000)). Because the resolution of such controlling questions of law could resolve a litigation in a more expeditious manner, judicial economy is served when these questions are resolved as quickly as possible.

Here, the Court's Order implicates no such "controlling questions of law." Indeed, the four alleged controlling questions County Defendants assert to justify an interlocutory appeal are manufactured, wholly inaccurate recitations of the Court's ruling, and/or have no relation to the Court's Order. *First,* County Defendants' assertion that this Court applied a standard "in determining a racial gerrymander" that is "different from that [standard] outlined in *Miller v. Johnson*"

(Question No. 1) is erroneous. As discussed in detail below, *infra* at 8, this Court's Order makes plain that Plaintiffs' Illustrative Plan appropriately considered race under *Miller*. *Second,* County Defendants' assertions that this Court held that it "never matters whether an illustrative districting plan used to demonstrate the first prong of the *Gingles* test" is a racial gerrymander (Question No. 2), and that a Section 2 violation can be sustained if one factor beyond the *Gingles* prerequisite is found (Question No. 4), are not conclusions found from, or questions presented by, this record. This Court did not make the first conclusion; it instead properly recited the law that the additional Senate factors are not necessary to find a violation, Order at 78-80, and held that Plaintiffs have proven other Senate factors, in addition to satisfying the *Gingles* prerequisites, sufficient to establish a violation of Section 2 of the Voting Rights Act, *id. Third*, as discussed in detail below, *infra* at 13, because the Supreme Court in *Shaw v. Hunt*, 517 U.S. 899, 915-16 (1996), assumed that compliance with Section 2 could be a compelling state interest (Question No. 3), this alleged issue, like the others raised by County Defendants, counsels against delaying relief for Plaintiffs.

Each of County Defendants' alleged controlling questions relies upon mischaracterizations of the Court's ruling that cannot fairly be attributed to the Order. The Court, for example, repeatedly made clear that Plaintiffs' Illustrative

Plan is not a racial gerrymander. Order at 26, 42. The County Defendants nevertheless refer to Plaintiffs' Illustrative Plan as such in three of its four "controlling questions." Defs.' Br. at 4.

Putting aside County Defendants' distortion of the Court's rulings, *McFarlin* requires that controlling questions of law provide "general relevance" to other Section 2 cases. 381 F.3d at 1259. Indeed, this Court has found that a question is controlling in a Section 1292(b) context "when it not only determines the case at hand, but also disposes of a wide spectrum of cases." *FXM, P.C. v. Gordon*, CIV.A. No. 1:07-CV-1642, 2007 WL 3491274, at *3 (N.D. Ga. Nov. 6, 2007) (citing *In re Pac. Forest Prods. Corp.,* 335 B.R. 910, 920 (2005)). County Defendants have not shown in their motion that there are similar questions pending in other cases, which would be disposed of through an interlocutory appeal. None of the County Defendants' four alleged controlling questions of law would dispose of a group of Section 2 cases.

B. There Is No "Substantial Ground" for Difference of Opinion Within the Meaning of 28 U.S.C. § 1292(b) Because There Is No Case Law Contrary to this Court's Summary Judgment Ruling.

In addition to failing to demonstrate the existence of a controlling question of law, County Defendants have failed to demonstrate, as Section 1292(b) requires, that there is a "substantial ground for difference of opinion" about the question of

law at issue. *McFarlin*, 381 F.3d at 1257. A substantial ground for difference of opinion is established when "the issue is difficult and of first impression, a difference of opinion as to the issue exists within the controlling circuit, or the circuits are split on the issue." *U.S., ex rel. Powell v. Am. InterContinental Univ., Inc.*, 756 F. Supp. 2d 1374, 1378-79 (N.D. Ga. 2010). County Defendants' motion does not cite any decisions (let alone a "substantial" degree of case law) from other courts that are contrary to the legal principles set forth in this Court's Order.

First, County Defendants incorrectly assert that the standard applied by this Court in determining that Plaintiffs' Illustrative Plan is not a racial gerrymander is at odds with the standard articulated by the Supreme Court in *Miller*. In particular, County Defendants urge that this "Court should have determined whether boundaries of the plan were explained predominantly by race or adherence to those traditional redistricting principles." Defs.' Br. at 6.

At the outset, this Court engaged precisely that question when it expressly recognized that "the relevant inquiry—whether the district was designed 'consistent with traditional districting principles'—necessarily relates to the question of whether race was the predominant consideration. After all, if the proposed plan disregards traditional redistricting principles, it is likely that these principles were disregarded in favor of race, rendering the district non-compact."

Order at 28-29. Thus, the Court considered whether the Plaintiffs' Illustrative Plan appropriately considered race under *Miller*, even though, as this also Court recognized, *Miller* relates to a different context.

Second, County Defendants misattribute to this Court the conclusion "that it *never* matters whether an illustrative districting plan used to demonstrate the first prong of the *Gingles* test . . . is itself a racial gerrymander." Defs.' Br. at 5 (emphasis added). This statement is a substantial mischaracterization of the Court's opinion. Instead, as the Order and Opinion make clear, the Court found Plaintiffs' Illustrative Plan district is *not* a racial gerrymander:

> Plaintiffs have therefore shown that although [their expert] Cooper certainly took race into consideration when creating the Illustrative Plan, he did not do so at the expense of other redistricting principles. In fact, Cooper testified that had he relied solely on race, he could have drawn a district with a 53.58% African-American voting-age population. However, taking other redistricting principles into account, including achieving a low population deviation, joining a community of interest, geographical compactness, and protecting incumbents, he was able to achieve a district that has a voting-age African-American population of 50.22%.

Order at 42.

In determining that Plaintiffs' Illustrative Plan is not a racial gerrymander, this Court considered the relevant indicia for what constitutes a gerrymander based on relevant case law. The Court found, for example, that, in addition to its

adherence to traditional redistricting principles, discussed *supra*, remedial "District 5 is geographically compact" under the Reock test. *Id.* at 32-33. Relying on *Bush v. Vera*, 517 U.S. 952, 977 (1996), the Court further determined that District 5 "could satisfy strict scrutiny." Order at 32-34 & n.15, 43 n.21. The Court also found that in District 5: (1) "the African-American population is dispersed throughout the northern half of the county, the cities of Fayetteville and Tyrone are separated by only 3.5 miles, and the two protrusions (one in Tyrone and one in Fayetteville) are linked together by much more than a mere narrow corridor of land;" (2) "it is undisputed that [the African-American population in (i) Kenwood, Europe and Blackrock, (ii) the City of Tyrone, and (iii) City of Fayetteville] are all in the northern half of the county," rejecting County Defendants' contention that they are distinct population centers; and (3) citing *Vera*, 517 U.S. at 977-79, the "pocket of African-American population in Tyrone and then another pocket in Fayetteville" are not "'small and apparently isolated minority communities,'" but rather "geographically close to the area in which the African-American population is generally concentrated." *Id.* at 34-35.

Furthermore, this Court found that "District 5 includes a community of interest," after deciding that "'manifestations of [a] community of interest'" as set

forth in *Vera*, 517 U.S. at 964, are present in District 5.[3] Order at 36. This Court determined that Plaintiffs' Illustrative Plan has a population deviation within the 10% norm for redistricting. *Id.* at 40. Finally, this Court found that Plaintiffs' Illustrative Plan permissibly split certain voting precincts. *Id.* at 41.

As this Court recognized,

> [i]n essence, none of the County Defendants' arguments shows that the residents of District 5 have 'disparate needs and interests,' . . . or that the plan 'includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who may have little in common with one another but the color of their skin.

Id. at 40 (citations and internal quotation marks omitted); *see id,* at 42 n.21 ("Having determined that District 5 is 'reasonably compact and regular, taking into account traditional districting principles such as maintaining communities of interest and traditional boundaries,' under *Gingles*, the Court finds that race was not [Plaintiffs' expert's] predominant consideration in designing the [Illustrative

[3] For example, this Court found that District 5 residents "'share common socioeconomic and political concerns,'" citing Fourth Circuit precedent providing that a "district that included citizens who shared common socioeconomic and political concerns followed traditional redistricting principle of drawing districts consistent with common interests). Order at 36-37 (citing *Cane v. Worcester Cnty., Md.*, 35 F.3d 921, 927 n.6 (4th Cir. 1994)). This Court also noted that "from outer city limits to outer city limits, Fayetteville and Tyrone are roughly 3.5 miles apart, in stark comparison to the 300-mile gap, an 'enormous geographical distance,'" separating two Latino communities in *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 435 (2006). Order at 36-37.

Plan].”). None of these determinations is a question of law, such that an interlocutory appeal could be appropriate.

Indeed, the Court's Opinion regarding Plaintiffs’ Illustrative Plan is consistent with, and grounded in, Eleventh Circuit case law. *Id.* at 27-28. The Eleventh Circuit, for example, has explained that applying “authorities such as *Miller* to [a] Section Two case … [was] unpersuasive, because the *Miller* and *Gingles/Nipper/SCLC* lines address very different contexts.” *Id.* at 27. Further, this Court recognized that the Supreme Court and the Eleventh Circuit’s “precedents *require* plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate. Accordingly, ‘[t]o penalize [the plaintiff] . . . for attempting to make the very showing that *Gingles, Nipper*, and *SCLC* demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action.’” *Id.* at 27 (citations omitted) (alterations in original).

Third, County Defendants misattributed to this Court the conclusion “that even if Plaintiffs’ Illustrative Plan is a racial gerrymander, it survives strict scrutiny because it is necessary to avoid Section 2 liability.” Defs.’ Br. at 5. As discussed *supra*, this Court held that Plaintiffs’ Illustrative Plan district is *not* a racial

gerrymander, and that race was appropriately considered in its creation. The Court found that:

> [R]ace was not Cooper's predominant consideration in designing the plan. However, even if race had been Cooper's primary consideration, the Court finds that the Illustrative Plan would survive strict scrutiny because it does not "subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." *Vera*, 517 U.S. at 977.

Order at 42 n.21.

County Defendants concede that the Supreme Court in *Shaw* assumed, without deciding, that compliance with Section 2 could be a compelling state interest. Defs.' Br. at 8-9, 13; *Shaw*, 517 U.S. at 915-16. *See also Vera*, 417 U.S. at 977.[4] In any event, because Plaintiffs' Illustrative Plan is not a racial gerrymander, as discussed above, strict scrutiny has no application here.[5]

Fourth, County Defendants wholly mischaracterize what was in fact this Court's searching totality of the circumstances review of all of the "typical" Senate Factors and more. County Defendants falsely assert that the Court reviewed only *one* additional factor beyond its review of the three *Gingles* prongs. Defs.' Br. at 9.

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[4] This Court's finding also is consistent with this jurisdiction's redistricting guidelines. *See Larios v. Cox*, 314 F. Supp. 2d 1357, 1359-60 (N.D. Ga. 2004) (noting guidelines in redistricting include "reconciling the demands of the Constitution, the Voting Rights Act, and the redistricting principles traditionally recognized by [Georgia]," and the former two take precedence over the latter).

[5] In fact, the Court in *Vera* avoided the constitutional issue which County Defendants seek to reach, because that case could be decided with reaching the constitutional decision. Likewise, the record here does not present the constitutional issue County Defendants seek to raise.

Instead, this Court's Order makes clear that it considered *ten* Senate Factors. *Thornburg v. Gingles*, 478 U.S. 30, 36 (1986); Order at 44-80. In so doing, the Court found that "[b]ased on the *heavy weight* of [lack of minority electoral success to either the BOC and BOE *and* racially polarized voting in both board elections] *along with the other factors identified above that . . . weigh in Plaintiffs' favor*," Plaintiffs satisfied the "totality of the circumstances" test. *Id.* at 78-79 (emphasis added). The three "other factors" that weighed in Plaintiffs favor, according to this Court include: (1) past discrimination and its lingering effects, *id.* at 52; (2) election practices that enhance discrimination (heavily for Plaintiffs), id. at 59; *and* (3) the Board of Commissioners' failure to appoint people of color to board and commission positions, *id.* at 78.

Thus, the Court found the presence of not only two of the weightiest Senate factors (*i.e.*, lack of minority electoral success, and racially polarized voting),[6] but also at least *three* additional Senate factors (i.e., past discrimination and its lingering effects, election practices that enhance discrimination, and responsiveness of Commissioners to African-Americans' particularized needs).

[6] Citing *Gingles*, this Court recognized the presence in this case of the most significant Senate factors which are lack of minority electoral opportunity and racially polarized voting. Order at 78-79 (citing *Gingles*, 478 U.S. at 51 n.15).

The Court did not merely consider *one* Senate factor as County Defendants incorrectly contend. Instead, it consider each of them,

Accordingly, since County Defendants have failed to satisfy their heavy burden of demonstrating the existence of "substantial" disagreement with this Court's ruling, their motion for certification of interlocutory appeal should be denied.

C. Immediate Appeal Will Not "Materially Advance the Ultimate Termination of the Litigation" But Will Only Prolong These Proceedings.

Even if County Defendants could establish the existence of a controlling question of law and a "substantial ground" for difference of opinion—which they cannot—their motion should still be denied because County Defendants have not established that an immediate appeal would "materially advance the ultimate termination of [this] litigation." *McFarlin*, 381 F.3d at 1259 (quoting 28 U.S.C. § 1292(b)). The interest of judicial economy militates against a stay and interlocutory appeal. An immediate and piecemeal appeal of this Court's summary judgment ruling would only serve to protract the ultimate disposition of this litigation for several reasons.

First, rather than expediting the existing litigation before this Court, County Defendants' motion would do precisely the opposite, as their motion entails a

request to stay the proceedings. *See* Defs.' Br. at 1. This stay should be denied, as County Defendants have not met the requirements for such a stay. *See infra* at 18-21. Moreover, appellate consideration of the issues that County Defendants seek to certify, even if proper for eventual certification, would not resolve additional questions that properly remain before this Court, such as [list an issue that is unrelated to the so-called "conclusions of law" and that would *need* to still be determined here.] Staying proceedings while (i) the parties brief this issue for the Eleventh Circuit; (ii) oral argument is held before the Court of Appeals; and (iii) the Eleventh Circuit renders a decision, would take many months, if not longer—and would still not dispose of the issues that remain before this Court, or preclude a second trip to the Eleventh Circuit in the event that those issues are also appealed.

Protracting the litigation would also frustrate Plaintiffs' ability to cure the adjudged Section 2 violation. The parties have not yet addressed, and the Court has not determined, whether to order special elections as a remedy to the existing violation of federal law. One of the questions is whether just one or all of the seats in a remedial plan will have to be filled by a special election. Another is the timing. These critical issues need to be addressed without Plaintiffs having to endure the existing violation for the many months, at best, that an appeal would consume.

County Defendants conceded during earlier proceedings that, "[i]f summary judgment is granted, an appeal to the Eleventh Circuit would occur in short order." Doc. 88 at 9; *see also* Defs.' Br. at 10-11. Thus, if this Court were to grant County Defendants' request, and the Eleventh Circuit ultimately affirms the issues appealed on interlocutory review with respect to the Court's Order, as it should, County Defendants could take a second bite of the apple by appealing the Court's final judgment to the Eleventh Circuit.

For these reasons, County Defendants have not satisfied their heavy burden of demonstrating that this is the "exceptional" case where an immediate interlocutory appeal would serve judicial economy. An immediate appeal at this juncture would instead be only the first of successive trips to the Eleventh Circuit, creating a piecemeal course of litigation that case law and the Rules disfavor. *McFarlin*, 381 F.3d at 1259 ("Because permitting piecemeal appeals is bad policy, permitting liberal use of § 1292(b) interlocutory appeals is bad policy.").

II. THE REQUIREMENTS FOR GRANTING A STAY PENDING APPEAL HAVE NOT BEEN MET.

Finally, County Defendants urge this Court to stay this case (1) because of the alleged resulting expense to the County and the alleged potential voter confusion in proceeding to the remedial phase, should the Order be reversed on appeal; and (2) because there is time to appeal this matter to the Eleventh Circuit

before the beginning of the next election cycle. Defs.' Br. at 12. This motion is meritless, and should be rejected because the each of the four factors governing the issuance of a stay pending appeal favors Plaintiffs. *See Hilton v. Braunskill*, 481 U.S. 770 (1987) (outlining the four factors determinative of a stay: (1) whether applicant must make a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether the issuance of the stay will substantially injure other parties interested in the proceeding; and (4) where the public interest lies).

First, County Defendants have not made a strong showing that they are likely to succeed on the merits, *id.* at 776, for all of the reasons discussed above. The strength of Plaintiffs' case is underscored by Court's unequivocal 81-page Order, and the reality that no Black candidate has ever been elected to the County Board of Commissioners or County Board of Education.

Second, County Defendants, significantly, *do not argue that they will be irreparably injured absent a stay*, asserting instead only that "the injury to the County and the voters of Fayette County will be significant . . . ." Defs.' Br. at 13. But an unsubstantiated allegation of "significant" injury is not equivalent to an irreparable injury, particularly where, as here, proceeding without a stay means that the parties would submit remedial plans to cure a violation of federal law on or

before June 25, after which point the Court will enter a final judgment in this case. County Defendants' failure to demonstrate irreparable injury strongly counsels against granting their request for a stay.

Moreover, County Defendants' argument that Plaintiffs would not be injured by a stay "because no elections are scheduled for nearly a year from now," *id.*, is flawed for two reasons. Initially, County Defendants assume that questions of the timing and extent of the remedy have been decided, which they have not. Moreover, County Defendants ignore the fact that the Court has found that the current at-large election system violates federal law—the injury to Plaintiffs is therefore current and ongoing. Plaintiffs' injury here should be mitigated expeditiously.

Third, if this Court did issue a stay, the ensuing delay in implementing a remedy would substantially harm Plaintiffs. Plaintiffs' on-going and current injury is substantial, as this Court correctly determined. While County Defendants express concern for "injury to the County and the voters of Fayette County," Defs.' Br. at 13, they fail to recognize that Plaintiffs are themselves Fayette County voters, who have a right to be free from the County's discriminatory at-large method of election. Having now received this Court's judgment that at-large voting in Fayette County is an illegal voting system – a fact Plaintiffs have insisted

upon "[s]ince [at least] 1993 [when] various Fayette County citizens have publicly advocated for district voting," *see* Order at 14—Plaintiffs and prospective voters should have the opportunity to participate in a special election for District 5 in November 2013.

Tellingly, County Defendants fail to acknowledge the burdens borne by Plaintiffs and other Black Fayette County citizens by having to endure what this Court has determined to be an illegal, dilutive electoral system. Even after this Court concluded that the scheme violates the Voting Rights Act, County Defendants strenuously resist the implementation of a non-discriminatory method of election and, instead, fight to remain one of the few counties in Georgia in which no Black person has ever been elected to its body.[7]

Fourth, denial of a stay is in the public's best interest. *Hilton*, 481 U.S. at 776. The time is now for Fayette County, following a nearly two century-old practice of maintaining a racially segregated county government, to implement a non-discriminatory electoral method that provides all Fayette County citizens the opportunity to elect their candidates of choice.

[7] This Court recognized that "[i]n Georgia, only a small minority of districts continue to use at-large elections to elect all school board members: of the 180 school districts in the state, Fayette County is one of twenty districts with completely at-large elections for all board members." Order at 12.

For these reasons, this Court should reject County Defendants' request for the issuance of a stay pending appeal.

CONCLUSION

For all of the foregoing reasons, Plaintiffs request that this Court deny County Defendants' motion (a) to amend its Order so as to permit County Defendants from pursuing an interlocutory appeal and (b) to stay this case.

Dated: June 14, 2013

Respectfully submitted:

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CERTIFICATE OF COMPLIANCE

1. The following statement is made in accordance with Civil Local Rules 7.1(D) and 5.1(B).

2. This brief was prepared in the processing system Microsoft Word 97-2003, with Times New Roman typeface, 14 point font (12 point footnotes).

Dated: June 14, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2013, I electronically filed *Plaintiffs' Opposition to County Defendants' Motion to Amend or Alter This Court's May 21 Order and For A Stay* with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record registered with the ECF system as required by this Court's Rules. I further certify that I mailed the foregoing document by first-class mail to counsel of record who are not CM/ECF participants as indicated in the notice of electronic filing.

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