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

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| GEORGIA STATE CONFERENCE OF THE NAACP, et al,<br><br>Plaintiffs,<br><br>v.<br><br>GWINNETT COUNTY BOARD OF REGISTRATIONS AND ELECTIONS, et al,<br><br>Defendants. | : | CIVIL ACTION NO.<br>1:16-cv-2852-AT |

**ORDER**

Plaintiffs' First Amended Complaint asserts that Gwinnett County's Black, Latino, and Asian-American voters have been denied an equal opportunity to elect candidates of their choice to the Gwinnett County Board of Commissioners and the Gwinnett County Board of Education in violation of § 2 of the Voting Rights Act (VRA).

Defendants moved to dismiss the Complaint on two primary grounds. First, Defendants contend that the Complaint fails to state a claim because the Voting Rights Act does not recognize a "coalition theory" such as the one advanced by Plaintiffs here on behalf of claimants from more than one minority group. Second, Defendants seek dismissal based on lack of standing. Defendants assert that the individual Plaintiffs lack standing because they have not pled that

they live in the challenged voting districts and thus have not demonstrated the required particularized injury. Defendants also assert that the Georgia NAACP and GALEO lack associational standing because: (1) they have not identified members of their organizations that live in either the challenged districts or would reside in the proposed remedial district, and (2) the groups do not represent the join interests of the coalition.

The Court held oral argument on the Motions to Dismiss [Docs. 48, 49, 52] on April 17, 2017, and advised the parties that it would allow discovery to commence prior to the Court's ruling on the motions to dismiss.

During the April 17th hearing, the Court advised Defendants that it was not convinced by their argument that the Supreme Court had essentially decided that Section 2 expressly limits the class of claimants to a single minority group in *Bartlett v. Strickland*, 556 U.S. 1, 12 (2009). In fact, the *Bartlett* Court carefully avoided announcing such a bar to multiple minorities joining together as group to form a majority to challenge a district's traditional white voting bloc. *See id.* at 13-14 ("This Court has referred sometimes to crossover districts as 'coalitional' districts, in recognition of the necessary coalition between minority and crossover majority voters . . . But that term risks confusion with coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition's choice . . . We do not address that type of coalition district here.") (citations omitted); *see also Growe v. Emison*, 507 U.S. 25, 41 (1993) ("Assuming (without deciding) that it was permissible for the District Court to combine

distinct ethnic and language minority groups for purposes of assessing compliance with § 2, when dilution of the power of such an agglomerated political bloc is the basis for an alleged violation, proof of minority political cohesion is all the more essential).

The Eleventh Circuit, along with the Fifth Circuit and others courts, recognize the permissibility of coalition claims under § 2, as long as plaintiffs are able to demonstrate the political cohesiveness of the coalition. *See Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524 (11th Cir. 1990) (following trial on the merits and concluding that class of black and Hispanic voters failed to demonstrate they were politically cohesive based on little evidence that blacks and Hispanics in Hardee County worked together and formed political coalitions and lack of any evidence that blacks and Hispanics had ever voted together); *Johnson v. Hamrick*, 155 F. Supp. 2d 1355, 1368 (N.D. Ga. 2001) (recognizing that "minority groups may be combined to form a single majority-minority district," but finding that plaintiffs failed to present sufficient evidence at trial to show that blacks and Hispanics were politically cohesive); *Campos v. City of Baytown*, 840 F.2d 1240 (5th Cir. 1988) (finding evidence that contiguous single member districts with 72.3% minority population (50% Hispanic, 22.3% Black), 75.4% minority population (50.7% Hispanic, 24.7% Black,) and 76.9% minority population (49.5% Hispanic, 27.4% Black) were possible was sufficient to satisfy *Gingles*); *see also Perez v. Abbott*, No. SA-11-CV-360, ECF No. 1339 at 77-78 (W.D. Tex. Mar. 10, 2017) (recognizing that "coalition

districts may be required by § 2, so long as Plaintiffs satisfy *Gingles* with regard to the coalition").

For these reasons, the Court rejects Defendants' argument that, as a matter of law, Section 2 claims may not be brought by a coalition of multiple minorities. The Court recognizes that Plaintiffs may face significant proof issues with regard to the political cohesiveness of the coalition, and thus the remainder of Defendants' arguments go to the merits of the claim and are more appropriately addressed at the summary judgment stage.

As stated at the hearing, the Court was most concerned with Defendant's standing arguments. For the reasons discussed, the Court ordered Plaintiffs to amend the Complaint to address certain defects in the pleading relating to Plaintiffs' standing to assert their claim under Section 2 of the Voting Rights Act raised by Defendants. The Court directed Plaintiffs to specifically: (a) identify the current Board of Commission districts and Board of Education districts in which the current Plaintiffs or any added plaintiffs reside, (b) identify the districts in which individual representative members of the Georgia NAACP and GALEO reside and allege if applicable, whether there has been vote dilution in these districts, and (c) identify individual Plaintiffs or representative organizational members residing in Board of Education District 5 and identify the nature of the harm suffered as a result of the alleged packing of minorities in District 5.

In compliance with the Court's Order, Plaintiffs filed their Second Amended Complaint on April 28, 2017. Plaintiffs' Second Amended Complaint

supersedes the First Amended Complaint and is now the operative pleading. *Dresdner Bank AG, Dresdner Bank AG in Hamburg v. M/V OLYMPIA VOYAGER*, 463 F.3d 1210, 1215 (11th Cir.2006) ("An amended pleading supersedes the former pleading; the original pleading is abandoned by the amendment, and is no longer a part of the pleader's averments against his adversary."); *Fritz v. Standard Sec. Life Ins. Co.*, 676 F.2d 1356, 1358 (11th Cir. 1982) ("Under the Federal Rules, an amended complaint supersedes the original complaint."). As Defendants recognize in the Consent Motion for Extension of Time for Defendants to Respond to Plaintiffs' Second Amended Complaint, [Doc. 86], the amendment contains new allegations that require further analysis and consideration. Accordingly, Defendants' Motions to Dismiss Plaintiffs' First Amended Complaint [Docs. 49, 52] are **DENIED AS MOOT**. Defendant may renew their arguments, as appropriate, in response to Plaintiffs' amended allegations. The Consent Motion [Doc. 86] is **GRANTED** and Defendants shall have through **May 26, 2017** to respond to Plaintiffs' Second Amended Complaint.

**IT IS SO ORDERED** this 12th day of May, 2017.

**Amy Totenberg**
**United States District Judge**