

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

GEORGIA STATE CONFERENCE OF THE)
NAACP; GEORGIA COALITION FOR THE)
PEOPLE’S AGENDA, INC.; GALEO)
LATINO COMMUNITY DEVELOPMENT)
FUND, INC.,)

Plaintiffs,

Case No. 21-cv-5338

v.

STATE OF GEORGIA; BRIAN KEMP, in his)
official capacity as the Governor of the State of)
Georgia; BRAD RAFFENSPERGER, in his)
official capacity as the Secretary of State of)
Georgia,)

Defendants.

PLAINTIFFS’ NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs respectfully submit the attached Order issued on July 7, 2022 in *Turtle Mountain Band of Chippewa Indians et al. v. Jaeger*, Case No. 3:22-cv-22, 2022 WL 2528256 (D.N.D. July 7, 2022), as supplemental authority in support of their Opposition to Defendant’s Motion to Dismiss (Doc. No. 66). As in this case, the plaintiffs in *Turtle Mountain* challenged a redistricting plan under Section 2 of the Voting Rights Act (“Section 2”) and 42 U.S.C. § 1983 (“Section 1983”). Order at 2; *Amended Complaint*, Doc. No. 59 at 97-99 (May 10, 2022). The *Turtle*

Mountain Defendants moved to dismiss in part by arguing that Section 2 does not provide a private right of action, citing *Arkansas State Conf. NAACP v. Arkansas Bd. of Apportionment*, 2022 WL 496908 (E.D. Ark. Feb. 17, 2022) (“*Arkansas NAACP*”). Order at 5-6.

In findings specifically relevant to the issue of the creation *vel non* of a private right of action in Section 2 of the VRA, the *Turtle Mountain* Court found that “the VRA itself seems to anticipate private litigation,” that “there has been private enforcement of the Section 2 of the VRA’s inception,” and that it is “difficult to imagine more explicit or clear rights creating language. It cannot seriously be questioned that Section 2 confers a right on a particular class of people.” Order at 10, 11.

Ultimately, the court in *Turtle Mountain* found it unnecessary to reach the issue of whether Section 2 of the VRA created a private right of action, because it found that Plaintiffs’ claims under Section 1983 of the Civil Rights Act, 42 U.S.C. §1983, gave them the private remedy to vindicate the rights created under Section 2 of the VRA. Here, Plaintiffs have pled claims under Section 1983, as to racial gerrymandering (Count I) and discriminatory purpose (Count III), but not under Count II (vote dilution). If this Court finds, contrary to Plaintiffs’ arguments, that there is no private right of action under Section 2 of the Voting Rights Act, Plaintiffs advise the Court that they will request that they be given leave to amend

their complaint so as to add Section 1983 as a basis for the vote dilution claim set forth in Count II of their First Amended Complaint.

Dated: July 18, 2022

Respectfully submitted,

By: /s/ Kurt Kastorf

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/ Kurt Kastorf _____

Kurt Kastorf

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing Plaintiffs' Notice of Supplemental Authority with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel or parties of record on the service list.

This 18th day of July, 2022

/s/ Kurt Kastorf

Kurt Kastorf

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