

**IN THE SUPERIOR COURT OF COBB COUNTY
 STATE OF GEORGIA**

KELI GAMBRILL,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION FILE NO.
)	
COBB COUNTY, GEORGIA,)	
)	
Defendant.)	
)	
)	

COMPLAINT FOR DECLARATORY RELIEF

COMES NOW Plaintiff Keli Gambrill (“Ms. Gambrill” or “Plaintiff”) and hereby files this Complaint against Cobb County, Georgia (the “County” or “Defendant”), respectfully showing this honorable Court the following:

PARTIES, JURISDICTION AND VENUE

1.

Ms. Gambrill is an individual who maintains her principal place of residence in Cobb County, Georgia and is a registered voter within the State of Georgia. She has voted and intends to continue to vote in the future in elections in Cobb County, including those for the Cobb County Board of Commissioners (the “BOC”). Ms. Gambrill is also a current member of the BOC. She brings this action not in her official capacity as a County Commissioner, but as an individual resident and registered voter of Cobb County; however, in both roles as an individual and a commissioner, she has an interest in having the BOC comprised of a group of individuals who have been elected in a fair and constitutional manner and who legally wield authority derived from a fair and constitutional election. She is interested in having the laws

executed and the public duty in question enforced and need not show any legal or special interest. This is sufficient to render her a proper plaintiff to this matter. *See* O.C.G.A. §9-6-24.

2.

Cobb County is a political subdivision of the State of Georgia. It is operated by the Cobb County BOC. For purposes of this lawsuit, the BOC is one and the same as the County, and all actions described herein undertaken by the BOC are considered action by the County.

3.

Jurisdiction and venue are proper in this Court pursuant to the Georgia Constitution, Art.VI, Sec.II, Para.VI. *See Brown v. Johnson*, 251 Ga. 436 (1983). The actions complained of occurred and continue to occur in Cobb County.

BACKGROUND FACTS

4.

After the 2020 U.S. census, it became apparent that the existing district map for Cobb County, Georgia needed to be revised to reflect the new data. The purpose of this matter is to determine which of two alternative maps is the proper and binding county commission district map for Cobb County. This requires a summary of the pertinent legislation and actions by two different governmental entities – the Georgia General Assembly and the BOC - that resulted in two different maps, one enacted by the General Assembly pursuant to HB 1154 (which ultimately became known as Act 562 on March 2, 2022), and another purportedly enacted by the BOC using its home rule authority. This redistricting was necessitated by the results of the 2020 U.S. census.

5.

On January 25, 2022, the BOC voted on agenda item no. 27 “to approve the proposed commission district map created based on the results of the 2020 U.S. Census.” The text of the agenda item explained that the districts needed to be “modified in order to remain compliant with the one person – one vote requirement of the United States Constitution. **Under Georgia law, the General Assembly is vested with the sole authority to draw new districts.**” BOC Agenda Item No. 27, attached hereto as **EXHIBIT 1** (emphasis added). Despite this direct admonishment that the County did not have authority, the BOC voted 3:2 to approve its own map.

6.

On February 1, 2022, in the General Assembly, Rep. John Carson filed HB 1154, “A BILL to be entitled an Act to amend an Act creating the Board of Commissioners of Cobb County, approved June 19, 1964 (Ga. L. 1964, Ex. Sess., p. 2075), as amended, particularly by an Act approved April 10, 2014 (Ga. L. 2014, p. 3893), so as to change the description of the commissioner districts; to provide for definitions and inclusions; to provide for continuation in office of current members; to provide for election and terms of office of subsequent members; to provide effective dates; to repeal conflicting laws; and for other purposes.” This bill introduced an amended districting map with new boundary lines for Cobb County Commission districts (the “Legislative Redistricting Map”).¹ Ultimately, this bill was passed by the Georgia

¹ A more detailed timeline of the progression of HB 1154 follows (all dates in year 2022): Feb. 2: House First Readers; Feb. 3: House Second Readers; Feb. 10: House Committee Favorably Reported HB 1154; Feb. 14: House Third Readers, House Passed/Adopted HB 1154, and House immediately transmitted to Senate HB 1154; Feb. 15: Senate read and referred HB 1154 and Senate withdrawn & recommitted HB 1154; Feb. 17: Senate committed favorably reported HB 1154; Feb. 22: Senate read second time; Feb. 24: Senate third read and Senate passed/adopted HB 1154; March 1: House sent to Governor HB 1154; March 2: House date

General Assembly on February 24, 2022, and was signed by the Governor and became effective on March 2, 2022, as Act 562. [Hereinafter, all references to Act 562 include HB 1154].

7.

On February 7, 2022, Rep. David Wilkerson filed "A BILL to be entitled an Act to amend an Act creating the Board of Commissioners of Cobb County, approved June 19, 1964 (Ga. L. 1964, Ex. Sess., p. 2075), as amended, particularly by an Act approved April 10, 2014 (Ga. L. 2014, p. 3893), so as to change the description of the commissioner districts; to provide for definitions and inclusions; to provide for continuation in office of current members; to provide for election and terms of office of subsequent members; to provide effective dates; to repeal conflicting laws; and for other purposes." This bill became known as HB1256. On February 8, 2022, HB 1256 was withdrawn.

8.

On September 16, 2022, a Notice of Proposed Amendment to an Act Creating the Board of Commissioners of Cobb County was posted in the Marietta Daily Journal (Ref. MDJ7537 gpn13). The Second and Third Notices were published on September 23, 2022, and September 30, 2022, respectively.

9.

On October 3, 2022, Rep. Ed Setzler provided an official opinion letter from the Georgia Office of Legislative Counsel to members of the Cobb County delegation members of the General Assembly. This letter explained that the BOC did not have authority under either

signed by Governor HB 1154, HB 1154 now recorded as Act 562, and Act 562 effective date March 2, 2022.

the Constitution or Georgia statutes to utilize the home rule powers to enact its own redistricting. A true and correct copy of this letter is attached as **EXHIBIT 2**.

10.

On October 11, 2022, the BOC voted on agenda item no. 41 "[t]o adopt a resolution amending Act 562, a local law that amended the local Act creating the Board of Commissioners of Cobb County, approved June 19, 1964 (Ga. L. 1964, Ex. Sess., p. 2075), as amended, particularly by an Act approved April 10, 2014 (Ga. L. 2014, p. 3893) so as to change the descriptions of the Commissioner districts; to provide for definitions and inclusions; to provide for continuation in Office of current members; to provide effective dates; to repeal conflicting laws; and for other purposes." The vote passed 3:2.

11.

On October 25, 2022, the BOC voted on agenda item no. 31 "[t]o adopt a resolution amending Act 562, a local law that amended the local Act creating the Board of Commissioners of Cobb County, approved June 19, 1964 (Ga. L. 1964, Ex. Sess., p. 2075), as amended, particularly by an Act approved April 10, 2014 (Ga. L. 2014, p. 3893) so as to change the descriptions of the Commissioner districts; to provide for definitions and inclusions; to provide for continuation in Office of current members; to provide effective dates; to repeal conflicting laws; and for other purposes." The vote passed 3:2 during the pendency of early voting for the November 2022 election.

12.

This was the second vote on the resolution and, as a result, the County adopted its own redistricting map (the "County Redistricting Map"), through the amendment of Act 562, allegedly pursuant to its home rule powers. This action was memorialized in a Resolution

Amending Local Law (the “Resolution”). A true and correct copy of the Resolution is attached as **EXHIBIT 3**. The Resolution cited HB 1256 and Art.IX, Sec.II, Para.1 of the Georgia Constitution (which sets forth the home rule powers). The County asserts that the Resolution was a valid amendment of Act 562 and that the County Redistricting Map is the valid and legally enforceable map.

13.

The Resolution contained the following language: "WHEREAS, during the 2022 legislation session of the 156th General Assembly of the State of Georgia, the majority of the legislators representing Cobb County (“Cobb County’s local delegation”) supported House Bill 1256 (“HB 1256”), which redrew the electoral district lines for Districts 1 through 4 of the Cobb County Board of Commissioners in accordance with the description contained in Appendix A of HB 1256, which was attached to and made a part of HB 1256 and which was further identified as “User: HD038 Plan Name: CobbCC-HD-038-Draft3- 2021 Plan Type: local[.]” This is false and misleading, as HB 1256 was never recorded by the Cobb delegation in the General Assembly, and unanimous support of the delegation was a required element for passage. The Resolution further falsely claimed that a vote on HB 1256 had occurred on January 25, 2022, when in fact, HB 1256 had not even been presented to the Legislature at that time. HB 1256 was not presented until February 7, 2022, and only at that time did it receive its House Bill number assignment. Moreover, the background statement in the agenda item considering the proposed Resolution specifically stated that the General Assembly has “sole authority to draw new districts.” Nonetheless, the BOC disingenuously and falsely claimed home rule authority for the amendment effecting its own map, when the BOC knew from the outset that no such authority existed.

14.

Upon conclusion of the October 25, 2022 BOC meeting, the Chair signed the Resolution, which was then overnighted to, and received by, the Georgia Secretary of State (the "SOS") on October 26, 2022. An amendment is not effective until filed with the SOS. *See* Ga. Const. Art.IV, Sec.II, Para.1(g). The home rule authority guidelines indicate that an amendment is effective when filed; however, language in the Resolution purported to delay effectiveness of the amendment until January 1, 2023. Specifically, the Resolution states: "The members of the Board of Commissioners of Cobb County shall be elected as provided in this subsection to the districts as newly described in this section. **Effective January 1, 2023**, the electoral district lines for Districts 1-4 of the Board of Commissioners of Cobb County are as described in Section 2(b) of this Act and in Appendix A to this Resolution. These electoral district lines will be used for elections for Cobb County Commission Districts 1-4 occurring on or after January 1, 2023. **Elections occurring between March 2, 2022, and December 31, 2022 will be based upon the electoral district lines as originally established by unamended Act 562**, identified as 'User: HD046 Plan Name: CobbCC HD046 2022 Plan Type Local.' Appendix B, attached hereto and made a part of this Act, contains a description of those electoral lines and also contains a map showing the boundary lines for the electoral districts for the Cobb County Board of Commission as established by Act 562, unamended." *See* Resolution, previously attached as **Exhibit 3** (emphasis added).

15.

The Georgia statutes provide that the General Assembly is the proper entity to enact redistricting legislation and adopt redistricting maps. The statutes prescribe a mechanism by which a county may seek introduction and adoption of a particular map for districts within its

boundaries, but this is to be accomplished through adherence to a specific procedure that requires the legislature's approval and ultimately results in enactment by the General Assembly. See O.C.G.A. §28-1-14.1. Nowhere does it allow for county action inconsistent with the General Assembly's chosen and enacted plan via local level amendment. Yet this is what the BOC has attempted in adopting the Resolution in an effort to circumvent the authority of the General Assembly.

16.

Residents of districts 1 and 3 voted for their commissioners in the 2022 general election. Act 562 provided that the new boundary lines would not be implemented until January 1, 2023, and the purported amendment of the map contained in the County's Resolution also had an effective date of January 1, 2023. However, Act 562 provided that the elections for districts 1 and 3 would be undertaken according to the new Legislative Redistricting Map. Therefore, the Cobb County residents of districts 1 and 3 voted in November 2022 based on their districts as set forth in the Legislative Redistricting Map. On November 8, 2022, the Cobb County Board of Elections certified the 2022 election results according to the Legislative Redistricting Map.

17.

The home rule powers upon which the BOC relies is found in the Georgia State Constitution at Art.IX, Sec.II, Para.1. This provision grants counties certain authority to enact or amend legislation related to its own governance. "The governing authority of each county shall have legislative power to adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law[.]" Ga. Const. Art.IX, Sec.II, Para.1(a) (emphasis added). Alternatively, a county

may amend local laws under certain circumstances. “Except as provided in subparagraph (c), a county may, as an incident of its home rule power, amend or repeal the local acts applicable to its governing authority” under one of two different procedures. Ga. Const. Art.IX, Sec.II, Para.1(b) (emphasis added).

18.

“The General Assembly may by general law preempt a local law and may by general law restrict the manner in which a county regulates.” *Clayton County v. Otis Pruitt Homes, Inc.*, 250 Ga. 505, 506 (1983). The General Assembly has already enacted a general law to govern the adoption of redistricting maps for county commission districts, which includes the procedure by which the affected county may undertake to submit its own map for approval and enactment. This is contained in O.C.G.A. §28-1-14.1. This statute preempts any attempt by the County to present and enact its own districting map except in accordance with the statute. Having been preempted by general law, the County is constitutionally and statutorily prohibited from exercising home rule authority to enact legislation on this matter. *See* Ga. Const. Art.IX, Sec.II, Para.1(c), (c)(2); *Clayton County v. Otis Pruitt Homes, Inc.*, 250 Ga. 505, 506 (1983).

19.

There is an explicit exception to the home rule powers, which prohibits the county from taking action in “matters which the General Assembly by law has preempted” or any “[a]ction affecting the composition, form, procedure for election or appointment, compensation, and expenses and allowances in the nature of compensation of the county governing authority[.]” Ga. Const. Art.IX, Sec.II, Para.1(c), (c)(2).

20.

The County's amendment of the redistricting map is also a prohibited use of home rule authority because it is a clear interference with composition, form, or procedure for election of the county governing authority. By filing the illegal amendment and purportedly changing the district map, the BOC created a conflict for the Board of Elections in carrying out its duties. If valid, the amendment would have become effective immediately upon filing, but the BOC inserted a delayed effective date of January 1, 2023, into the text of the Resolution. This created a situation where the November 2022 election was taking place at a time when the amendment was allegedly effective but the County Redistricting Map was not being enforced. The Cobb County voters were being asked to vote according to the Legislative Redistricting Map that would not govern after the newly elected commissioners took their oaths. The Board of Elections was being asked to certify an election based on a map that had already allegedly, although illegally and invalidly, been amended. In sum, the Resolution was an overt misuse and abuse of the home rule authority, and the County Redistricting Map is illegal, unconstitutional, and not binding.

21.

There is no statutory or constitutional authority for the County's use of home rule powers to enact redistricting legislation.

22.

This has been acknowledged at the State level by both the Attorney General's Office and the Secretary of State's Office.

23.

Georgia State Attorney General Chris Carr has stated that the County's vote to amend the map was "inappropriate and not legally binding."

24.

C. Ryan Germany, general counsel for the Secretary of State, cautioned that the ministerial act of filing the amendment did not render it legally effective and explicitly stated that "it appears that the Amendment is very likely an unauthorized exercise of authority by the Cobb County Commission that does not comply with Georgia law or the Georgia Constitution." See Letter from C. Ryan Germany to H. William Rowling, Jr., County Attorney for Cobb County, dated December 22, 2022, attached as **EXHIBIT 4**. Mr. Germany further warned the Board of Elections that proceeding with invalid boundary lines could warrant sanctions against the it for improperly placing voters in their voting districts. See previously attached **Exhibit 4**.

25.

The limited authority of the County and its mandatory deference to the state legislature in redistricting matters has been recognized by the BOC Chair Lisa Cupid. On February 3, 2023, she acknowledged that "State leaders do not have to consult leaders that represent locally on the BOC, School board, or House of Representatives."

26.

The County claims that it was given advice and instruction as to the limits of its home rule authority. The Association of County Commissioners of Georgia ("ACCG") has published information about the home rule powers and spelled out what the county commissioners can and cannot do under the guise of such authority. This publication warns commissioners to "[k]eep in mind that the constitution spells out specific EXCEPTIONS to the exercise of county

home rule power, regardless of whether it is first tier or second tier. These exceptions include any action: (1) Affecting any elective county office, the salaries thereof, except the personnel subject to the jurisdiction of the county governing authority.” Despite the warnings of the ACCG, the County ignored the list of express constitutional prohibitions on home rule application and attempted to amend Act 562 and implement its own redistricting map.

27.

“Legislative acts in violation of this Constitution or the Constitution of the United States are void, and the judiciary shall so declare them.” Ga. Const. Art.I, Para.V, et seq. The Resolution amending the Legislative Redistricting Map is invalid, illegal, and unconstitutional. A declaratory judgment to this effect is necessary, as the County refuses to comply on its own.

28.

Sovereign immunity is waived as to declaratory actions against a county or state agency, as well as for any injunctive relief necessary to implement the court’s judgment. See Ga. Const. Art.I, Sec.2, Para.5(b)(1).

29.

Pursuant to *Mobley v. Polk County*, 242 Ga. 798, 801-02 (1979), “[n]either the counties of the state nor their officers can do any act, make any contract, nor incur any liability not authorized by some legislative act applicable thereto. If there is reasonable doubt of the existence of a particular power, the doubt is to be resolved in the negative. Powers of county commissioners are strictly limited by law, and they can do nothing except under authority of law.”

30.

Any authority for a county BOC to undertake its own redistricting must be derived from an explicit statutory or constitutional grant of authority. None exists in this case to support the County's Resolution and attempted amendment of Act 562. *See Camp v. Williams*, 314 Ga. 699 (2022).

31.

Powers of county boards of commissioners are limited. Georgia counties do not enjoy any statutory or constitutional authority to enact redistricting legislation, and in fact, the Constitution specifically prohibits counties from undertaking such action. The General Assembly is the only appropriate body to enact new districting maps when necessary. *See* O.C.G.A. §28-1-14.1; *Smith v. Cobb County Bd. of Elections and Registrations*, 314 F.Supp.2d 1274, 1314 (N.D. Ga. 2002); *Bodker v. Taylor*, 2002 U.S. Dist. LEXIS 27447 (N.D. Ga. 2002).

COUNT I
DECLARATORY RELIEF

32.

Plaintiff reasserts and realleges the foregoing paragraphs, as if more fully stated herein.

33.

Declaratory relief is proper "to settle and afford relief from uncertainty and insecurity with respect to rights, status and other legal relations[.]" O.C.G.A. §9-4-1.

34.

In order to have standing under the Declaratory Judgment Act, a plaintiff need only show that the issuance of a declaratory judgment is necessary "to settle and afford [them] relief from uncertainty and insecurity with respect to rights, status, and other legal relations."

O.C.G.A. 9-4-1. "Declaratory relief is available where a legal judgment is sought that would

control or direct future action,” under circumstances where that action might jeopardize or affect the rights, liabilities, or interests of the party seeking the declaratory judgment. *See, e.g., Head v. DeKalb County*, 246 Ga.App. 756, 760 (Ga. Ct. App. 2002); *Royal Lepage Real Estate Svcs. of Atlanta v. Spalding Partners, Ltd.*, 192 Ga.App. 284, 284-85 (384 S.E.2d 424 (Ga. Ct. App. 1989).

35.

The County has demonstrated its unwillingness to adhere to the legally valid and binding Legislative Redistricting Map set forth in Act 562 and continues to instead promote its own redistricting map that relies on illegal and invalid boundary lines drawn by the County improperly based on a misuse of its home rule powers.

36.

A legal judgment declaring the Legislative Redistricting Map to be the controlling and legally binding map, effective as of January 1, 2023, and ordering the County to comply with this map retroactively and proactively, is required to ensure that citizens of Cobb County are being fairly and constitutionally represented.

WHEREFORE, Plaintiff prays as follows:

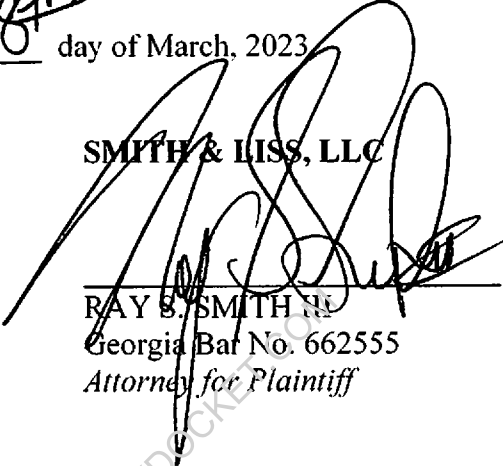
- (1) That this Court enter an Order declaring that:
 - a. The Resolution passed by the Cobb County Board of Commissioners on October 25, 2022, was in contravention of the Constitutional requirements and limitations of the home rule authority and is therefore unconstitutional, invalid, null and void;

b. The Legislative Redistricting Map contained in Act 562 (Ga. L. 2022, p.5295), as passed by the General Assembly and signed into law by the Governor is the legal and binding districting map for Cobb County Commission districts; and

(2) That this Court grant such further relief as it deems just and proper.

Respectfully submitted this 20th day of March, 2023

SMITH & LISS, LLC


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IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA

KELI GAMBRILL,)
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 v.) CIVIL ACTION FILE NO.
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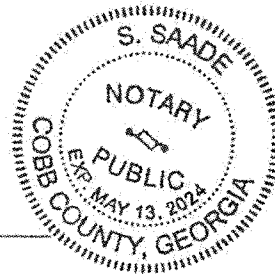
VERIFICATION OF COMPLAINT

Personally appeared before the undersigned officer, duly authorized to administer oaths, KELI GAMBRILL, who, upon first being duly sworn on oath, deposes and states that to the best of her knowledge, information, and belief, the facts contained in the COMPLAINT are true and correct.

Keli Gambrell
KELI GAMBRILL

SWORN TO AND SUBSCRIBED TO ME
THIS 21 DAY OF MARCH, 2023.

S. Saade
NOTARY PUBLIC



MY COMMISSION EXPIRES: 5-13-2024
[NOTARY SEAL]