IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

Common Cause Florida, FairDistricts Now, Florida State Conference of the National Association for the Advancement of Colored People Branches, Cassandra Brown, Peter Butzin, Charlie Clark, Dorothy Inman-Johnson, Veatrice Holifield Farrell, Brenda Holt, Rosemary McCoy, Leo R. Stoney, Myrna Young, and Nancy Ratzan,

Plaintiffs,

v.

Cord Byrd, in his official capacity as Florida Secretary of State,

Defendant.

Case No. 4:22-cv-109-AW-MAF

THE SECRETARY'S RESPONSE IN OPPOSITION
TO PLAINTIFFS' MOTION FOR RECONSIDERATION

The Secretary opposes Plaintiffs' motion for reconsideration. Doc.228. In this response in opposition, page numbers of docketed documents are the upper-right, blue page numbers, not the bottom-middle, black page numbers. For the reasons expressed in the following memorandum, this Court should deny Plaintiffs' motion.

Memorandum

Plaintiffs' motion is procedurally improper and substantively flawed.

I. Start with the procedural impropriety. A Rule 59(e) motion shouldn't "relitigate old matters" that were already brought before a court, considered by that court, and resolved by that court. *Michael Linet, Inc. v. Vill. of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005). Yet Plaintiffs simply rehash old arguments that were already raised in their post-trial brief. Doc.218.

Just compare the post-trial brief to Plaintiffs' motion. Both filings say that the Governor is a state actor. *Compare* Doc.218 at 122, *with* Doc.228 at 13. Both say that the Governor exercised legislative authority during the Enacted Map's passage. *Compare* Doc.218 at 123, *with* Doc.228 at 17. Both discuss ratification. *Compare* Doc.218 at 122, *with* Doc.228 at 22. And both argue that the *Arlington Heights* factors favor Plaintiffs. *Compare* Doc.218 at 129, *with* Doc.228 at 24. Plaintiffs therefore tread no new ground. They even admit as much. *See, e.g.*, Doc.228 at 11 (conceding that Plaintiffs merely restate an argument from "their Pre-Trial and Post-Trial Briefs").

II. Plaintiffs miss the mark on their *Arlington Heights* analysis, as well. The *Arlington Heights* factors gauge whether *all* relevant government officials had discriminatory intent when enacting a law. Focusing on just one government official from one branch of state government doesn't cut it. This makes sense. *Arlington Heights* cases have consistently held that one legislator's intent can't be imputed on the entire legislature. *See, e.g.*, *League of Women Voters of Fla. v. Fla. Sec'y of State*, 66 F.4th 905, 931-

32 (11th Cir. 2023); *Greater Birmingham Ministries v. Sec'y of Ala.*, 992 F.3d 1299, 1323-24 (11th Cir. 2021). It follows that one *executive* branch official's intent can't be imputed on a *legislative* branch official—let alone the entire *legislative* branch. Doc.222 at 51 (collecting cases).

Yet Plaintiffs persist in their attempt to impute the Governor's intent onto the Florida Legislature. They continue to point at one, and only one, government official under the false assumption that he is the entire state government. That's obviously wrong. There's the Florida Legislature, which has its own members, constituents, and procedures. State legislators also have their own, separate, independent motivations and intent in passing a piece of legislation. Even in passing the Enacted Map, state legislators had their own, separate, independent motivations and intent in passing the bill, as this Court recognized.

Plaintiffs chose not to go after the Florida Legislature: they didn't "level[]" any race-based "accusation against any legislator." Tr.983:5-7; *see also* Tr.982:24 – 983:4. That was a mistake—again, because *every* relevant government official's intent matters in an *Arlington Heights* analysis. In fact, government officials' intent may:

> [C]ome from a variety of sources: one [official] may support a particular piece of legislation for a blatantly unconstitutional reason, while another may support the same legislation for perfectly legitimate reasons. A well-intentioned [official] who votes for the legislation—even when he votes in the knowledge that others are voting for it for an unconstitutional reason and even when his unconstitutionality motivated colleague influences his vote—does not automatically ratify or endorse the unconstitutional motive. If we adopt the rule suggested by Plaintiff, the well-intentioned [official] in this hypothetical would be forced to either to

> vote against his own view of what is best for his [state] or to subject his [state] to Section 1983 liability. We think the law compels no such outcome.

Matthews v. Columbia County, 294 F.3d 1294, 1298 (11th Cir. 2002).

It was also a mistake because Plaintiffs must overcome the presumption of good faith. Doc.222 at 51 (collecting cases). Plaintiffs only proved at trial that the Governor sought to comply with the U.S. Constitution by vetoing the Florida Legislature's earlier plan before it passed the Enacted Map. *See, e.g.*, JX 55. An intent to comply with the U.S. Constitution would fall short of any application of the *Arlington Heights* standard.

Importantly, even assuming bad faith on *one* government official's part—which *none* of this Court's three opinions found—there's the presumption that the *other* government officials acted in good faith to pass the Enacted Map. Doc.222 at 51 (collecting cases). Nothing in Plaintiffs' trial strategy, post-trial brief, or motion overcomes the presumption that state legislators passed the Enacted Map in good faith.

In fact, Plaintiffs have acknowledged that, in at least some cases, "a legislative body's enactment of a bill is sufficiently independent to purge the taint of another state actor's discriminatory intent." Doc.218 at 124. And, in this case, Plaintiffs never argued that any legislator was misdirected by any alleged racial motivation. *See* Doc.228 at 32. Instead, Plaintiffs conceded that "the evidence shows the Legislature was fully informed about the law regarding redistricting" and "there was no reason to accuse any legislator of racial animus." Doc.228 at 32. That is as true when the Florida Legislature passed the Enacted Map—an intervening and necessary event free from any suggestion of

racial intent, outside of the Governor's ambit—as at the outset of the redistricting process.

This Court thus got it right in its final order. Doc.222 at 51-58. There's no need to reconsider that decision especially when no new arguments are being presented.

Respectfully submitted by:

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LOCAL RULES CERTIFICATIONS

As required by Local Rule 5.1 and 7.1, I certify that this document contains 910 words and complies with this Court's word count, spacing, and formatting requirements.

/s/ Mohammad O. Jazil
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CERTIFICATE OF SERVICE

I certify that on May 8, 2024, this document was filed through the Court's CM/ECF, which will serve a copy to all counsel of record.

/s/ Mohammad O. Jazil
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