

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

AUSTIN THOMPSON, an individual;  
DARRYL PAYTON, an individual;  
AUDRA CUNNINGHAM, an  
individual; SABRINA MCKENZIE, an  
individual; JAMIDA ORANGE, an  
individual; ANDREA SNOW, an  
individual; SAMMY ARREY-MBI; an  
individual; LYNNE ANDERSON, an  
individual; and CORETTA JACKSON,  
an individual,

Plaintiffs,

v.

BRIAN KEMP, in his official capacity as  
Secretary of State of the State of  
Georgia,

Defendant.

Civil Action No.  
1:17-cv-03856-TCB

**REPLY REPORT OF RICHARD L. ENGSTROM, Ph.D.**

RICHARD L. ENGSTROM, acting in accordance with 28 U.S.C. § 1746, Fed. R. Civ. P. 26(a)(2)(B), and Fed. R. Evid. 702 and 703, does hereby declare and say:

1. My name is Richard L. Engstrom and I am a resident of Chapel Hill, North Carolina. I previously submitted a Declaration in this case dated August 6, 2018.

2. The expert witness for the Defendant in this case, Dr. John Alford, reports that “in every instance” his EI estimates for elections that were included in my August 6 report are “virtually identical to his estimates.” Dr. Alford further reports that his conclusions do not “depend[] in any way on a distinction between the point estimates or confidence intervals” reflected in my August 6 report and the “substantively identical point estimates and confidence intervals” in Dr. Alford’s report. (Alford Report, at 6).

3. My estimates are derived from elections in which voters had a choice between or among African American candidates and non-African American candidates. These are considered the most probative type of elections for assessing “racially polarized voting” when African Americans are the protected minority at issue in a Section 2 case under the Voting Rights Act. (August 6 Engstrom Report, at n.3). Based on these estimates I concluded that:

Racially polarized voting is acute in state House elections, state Senate elections, and statewide elections in the 10-county metro Atlanta area. ... African American voters in that area have been strongly cohesive in their support for the African American candidates in these elections. There is only one exception to this among the 28 elections examined. Likewise, non-African American voters have not shared that preference. Again, there is only one election where that is not the case (Engstrom Report, at 12).

4. The results of my analyses, relying on the most probative types of elections for assessing racially polarized voting, and on estimates of African American political cohesion and non-African American crossover voting that are “virtually identical” to those produced by Dr. Alford, provide a strong evidentiary basis for the presence of racially polarized voting, as that concept has been defined by the United States Supreme Court, *to wit*, “it refers to the situation where different races (or minority language groups) vote in blocs for different candidates” (*Gingles*, at 63).

5. My analysis of racially polarized voting is guided by the standards set forth in *Gingles*. In *Gingles*, the Court made clear that an analysis of racially polarized voting is a descriptive matter, not a causal matter. (*Gingles*, at 62-63).

6. My analyses are appropriately descriptive, as is my conclusion repeated above. Dr. Alford however frames his analysis as a causal inquiry, assessing whether the differences in the candidate choices of African American and non-African American voters that I have documented, and which he does not dispute, are a *function* of race or partisan attachments (Alford Report, at 7,8, 9, and 11). He asks whether voters are responding to “partisan cues” or “racial cues” (Alford Report, at 11-12), and concludes that the differences are due to partisan voting, with African Americans voting for Democratic candidates and non-African Americans voting for Republican candidates (Alford Report, at 14).

## PROBLEMS WITH DR. ALFORD'S ANALYSIS

7. There are a number of problems with Dr. Alford's analysis. First, he treats race and party as separate and distinct variables when it comes to influencing the candidate preferences of voters. But when it comes to voting, particularly in the South, race and party are not completely separate. The two variables are in fact empirically entangled, rather than mutually exclusive. As a prominent political scientist, Bruce Cain, has written, "racial polarization and party polarization are two sides of the same coin."<sup>1</sup> This entanglement is due to the fact that race and partisanship tend to be highly correlated in partisan elections.

8. Dr. Alford does not acknowledge that racial considerations can have an impact on voters' partisan preferences, as social scientists who study southern politics well understand. As I have written elsewhere, "Well researched studies have placed the issue of civil rights at the center of white flight from the Democratic Party and the growth of the Republican Party in the South."<sup>2</sup> A critical event in this

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<sup>1</sup> Bruce E. Cain, "Moving Past Section 5: More Fingers in the Dike?", 12 *Election Law Journal*, (No. 3, 2013), 339.

<sup>2</sup> Richard L. Engstrom, "Thernstrom v. Voting Rights Act: Round 2," 9 *Election Law Journal*, (No. 3, 2010), 209 n.3. See especially Edward Carmines and James A. Stimson, *Issue Evolution: Race and the Transformation of American Politics* (Princeton, NJ: Princeton University Press (1989)); Paul Frymer, *Uneasy Alliances; Race and Party Competition in America* (Princeton, NJ: Princeton University Press (1999)); Nicholas A. Valentino and David O. Sears, "Old Times They are not Forgotten: Race and Partisan Realignment in the Contemporary South," 49 *American Journal of Political Science* (July 2005), 672-688; Vincent L. Hutchings, Hanes Whalton, Jr., and Andrea Benjamin, "The Impact of Explicit Racial Cues on Gender

process was the 1964 Presidential election, in which the Democratic nominee, President Lyndon B. Johnson, had supported the passage of the 1964 Civil Rights Act and the Republican nominee, U.S. Senator Barry Goldwater, had voted against it. As political scientists Edward Carmine and James A. Stimson have written, with this and subsequent elections, “issues of race took on a clear partisan complexion.”<sup>3</sup> Indeed, political scientists D. Sunshine Hillygus and Todd G. Shields state, “The Republican use of racial issues to appeal to conservative white Democrats [in the South] is perhaps the most widely recognized example of a wedge campaign tactic.”<sup>4</sup> They further state that emphasizing racial issues had “earned the Republican Party the reputation of racial insensitivity.”<sup>5</sup>

9. This reputation is not a thing of the past. In 2013 the National Republican Committee (RNC) published a document, *Growth and Opportunity Project*, in which the RNC acknowledged that the Republican Party has a problem gaining the support of minority voters.<sup>6</sup> In this sometimes remarkably candid

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Differences in Support of Confederate Symbols and Partisanship,” 72 *Journal of Politics* (October 2010), 1175-1188.

<sup>3</sup> Carmines and Simpson, *Issue Evolution*, at 118.

<sup>4</sup> D. Sunshine Hilygus and Todd G. Shields, *The Persuadable Voter: Wedge Issues in Political Campaigns* (Princeton, NJ: Princeton University Press (2008)) at 108.

<sup>5</sup> Hillygus and Shields, *Wedge Issues*, at 138.

<sup>6</sup> Republican National Committee, *Growth and Opportunity Project*, 2013 (Washington, D.C.).

document it is noted that many minority voters “think that Republicans do not like them.”<sup>7</sup> Former Republican House Majority Leader Dick Armey is quoted as saying, in regard to Latinos, “You can’t call someone ugly and expect them to go to the prom with you.”<sup>8</sup> Recommendations in the document call for more sincere and more frequent efforts at outreach to minorities, including a change in party “tone” to one that to one that “welcomes in,” and in messaging, to “a welcoming, inclusive message.”<sup>9</sup> It further states that “The pervasive mentality of writing off blocks of states and demographic votes for the Republican Party must be completely forgotten.”<sup>10</sup> There is even a call for “a more welcoming conservatism.”<sup>11</sup>

10. These party images cannot be dismissed in understanding why, according to political scientist James M. Glaser, “it is the Republican Party that is the party of southern whites, at least in the minds of many of the people who live there.”<sup>12</sup> Dr. Alford is wrong to suggest that the divisions in party preferences in the South are not themselves associated with race.<sup>13</sup>

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<sup>7</sup> RNC, *Growth and Opportunity*, at 4.

<sup>8</sup> *Ibid.*, at 8.

<sup>9</sup> *Ibid.*, at 15, 16, and 18.

<sup>10</sup> *Id.*, at 12.

<sup>11</sup> *Id.*, at 5.

<sup>12</sup> James M. Glaser, *The Hand of the Past in Contemporary Southern Politics* (New Haven, CT: Yale University Press (2005)), 169. See also Hillygus and Shields, at 117.

11. Another problem with Dr. Alford's analysis is that his conclusion that voters in the 10-county Atlanta metro area are casting votes based on "the partisan labels of candidates and not the race of the candidates" (Alford Report, at 9) is based on voting in white on white elections in which voters cannot vote based on the race of a candidate because all of the candidates are white.

12. As Dr. Alford states, this conclusion relies primarily on "the larger set of statewide elections" that he examines within the 10-county Atlanta metro area (Alford Report, at 9). In fact, he states it is this larger set of statewide general election contests that makes that pattern "*clear*" to him (Alford Report, at 9,

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<sup>13</sup> No doubt racial campaign appeals expressed through "dog whistles" exacerbate this situation. An example of this is former Speaker of the House Newt Gingrich, himself from Georgia, stating in an interview on Fox News while serving as a surrogate during the 2012 presidential campaign for Mitt Romney, the Republican nominee for President, that President Barack Obama, an African American, had "rhythm" that "the rest of us don't understand," and questioning whether "he needs to go play basketball for a while." He further tapped a long-time source of southern white anger toward African Americans by referencing what he called "the depth of his [Obama's] arrogance." See "Gingrich Destroys Obama: Barack Obama Wakes Up Every Morning and Thinks About Barack Obama," <http://nation.foxnews.com/newt-gingrich/2012/09/26/gingrich-obamas-part-timer-not-real-president>.

Another, more recent example is the white Republican nominee for Governor of Florida this year, Ron DeSantis, inserting the word "monkey" in a statement about his African American Democratic opponent, Andrew Gillum. DeSantis commented: "The last thing we need to do is *monkey* this up by trying to embrace a socialist agenda with huge tax increases and bankrupting the state," which he alleged Gillum would do as Governor (emphasis added). The Florida State Conference of the NAACP stated in response that comparisons to monkeys are "by far the best-known racist references to African Americans in our national folklore." John Wagner and Vanessa Williams, "DeSantis says Florida voters would 'monkey this up' if they elect Gillum as governor," *Washington Post*, August 29, 2018, [https://www.washingtonpost.com/powerpost/desantis-says-florida-voters-would-monkey-this-up-if-they-elect-gillum-as-governor/2018/08/29/e4cbc5c6-ab96-11e8-8a0c-70b618c98d3c\\_story.html?noredirect=on&utm\\_term=.4237d62d6230](https://www.washingtonpost.com/powerpost/desantis-says-florida-voters-would-monkey-this-up-if-they-elect-gillum-as-governor/2018/08/29/e4cbc5c6-ab96-11e8-8a0c-70b618c98d3c_story.html?noredirect=on&utm_term=.4237d62d6230).

emphasis added). He expands his set of statewide elections by adding six such contests from 2010 and four from 2014 to the set. But all 10 of these elections are white on white elections. These elections of course cannot serve as the basis for assessing whether voters are responding to the partisan labels of candidates *or* the race of the candidates because there are no African Americans candidates to vote for in them. These contests simply do not provide a voter with the choice of a racial cue, only the choice of a partisan cue. Over half (10 out of 18) of the statewide election contests he relies upon (see Alford Tables 1 and 2, at 6 and 8) to allegedly provide clarity to the pattern he sees of partisan cues trumping racial cues among the voters, simply cannot provide evidence of that pattern.

13. In short, every person casting a ballot in one of these white on white statewide general election contests, could choose, for all intents and purposes, between a white candidate of the Democratic Party or a white candidate of the Republican Party.<sup>14</sup>

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<sup>14</sup> The only political party other than the Democratic or Republican Parties to have a nominee on the ballot in one of these white on white contests was the Libertarian Party, which fielded candidates in eight of them. The statewide vote for the Libertarian candidates in these contests ranged from 1.9 percent to 4.9 percent across these elections. Write-in votes were posted only for the 2010 election, not the 2014 election, and the largest number of write-in votes for a statewide candidate in any of these white on white elections was 88 votes. For the 2010 elections, see the Georgia Secretary of State's website, at [http://sos.ga.gov/elections/election/election\\_results/2010\\_1102/swfed.htm](http://sos.ga.gov/elections/election/election_results/2010_1102/swfed.htm), and for the 2014 elections, see <http://results.enr.clarityelections.com/GA/54042/149045/en/summary.html>.



14. Dr. Alford further claims that his “broader set of elections,” over half of which are white on white elections, “show that regardless of the race of the Democratic candidate, Black voters typically give something very close to 99 percent of their votes to the Democratic candidate” (Alford Report, at 10, see also 12). This he claims is evidence that African Americans vote based primarily on party, rather than on race. What this shows, however, is that when African American voters do not have a racial cue in partisan election, but only a party cue, they choose to vote for white Democratic candidates over white Republican candidates. This is not surprising. As noted above, the Republican Party has earned “the reputation of racial insensitivity.” There is certainly no question that the Republican Party’s responsiveness to the policy preferences of African Americans trails that of the Democratic Party.<sup>15</sup>

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<sup>15</sup> Not only do these elections tell us nothing about the extent to which voters are choosing party over race as their motivation for casting a ballot, Dr. Alford’s suggestion that voters in these elections are driven by attachments to one party over another also finds no support from these elections. In Dr. Alford’s analysis, every voter who voted in these elections is considered to be attached to the party of the candidate for whom they voted. But this is not a reliable indicator of committed partisans. Many types of voters can vote in a general election. Not all of them have strong partisan identifications that determine their votes. Some may be independent of, or not affiliated with, political parties at all. They may have had a preference for a particular candidate in an election that had nothing to do with the party affiliation of that candidate. Some voters who may have a general preference for the Democratic Party may have crossed over to vote for one or more of the Republican candidates on a ballot, while voters with a general preference for the Republican Party may have voted for one or more of the Democratic candidates. Dr. Alford would classify the same voter as a Democrat in the election contests in which he or she voted for a Democratic candidate and a Republican in the election contests in which he or she voted for a Republican candidate.

15. Dr. Alford further claims support for his conclusion from one other election. This was the 2012 election in House District 86. This was the only election contest among the 28 biracial elections analyzed in this case in which the Republican candidate, Lisa Kinnemore, was an African American. Dr. Alford claims that in this election, the party cue prevailed over the racial cue among African American voters (Alford Report, at 10, 12). African Americans rejected the candidacy of Ms. Kinnemore. This is the only instance across *all* of the elections analyzed by Dr. Alford or myself in which African Americans did not support an African American candidate. There is no requirement that African Americans have to support every African American whose name appears on a ballot for them to be considered politically cohesive. Certainly, African Americans are entitled to exercise their discretion over which African American candidates to support without that negating their clear preference to be represented by members of their group, as is revealed in the analyses in this case.

16. It should also be noted that Ms. Kinnemore was not the choice of non-African American voters either. Both Dr. Alford and myself estimate her percentage of the non-African support to have been 47.5, which was the lowest percentage of the vote, by far, cast by non-African American voters for any of the Republican candidates in these elections (see Engstrom Report, at 10). The fact that this

candidate was preferred by neither group reflects a rejection of this candidate, not a lack of racially polarized voting in the 10-county metro Atlanta area.

### CONCLUSION

17. In my initial report in this case I concluded that racially polarized voting is acute in state House elections, state Senate elections, and statewide elections in the 10-county metro Atlanta area. Dr. Alford now attempts to cleanse that polarization of any racial content. His analysis cannot and does not accomplish his goal.

18. The analysis is seriously flawed. Dr. Alford declines to recognize the entanglement of race and political party, two variables that are highly correlated empirically. This results in him refusing to acknowledge that race has an impact on the partisan preferences of many voters, even though one of the major parties in our two-party system has a reputation for being less favorable to racial minorities than the other.

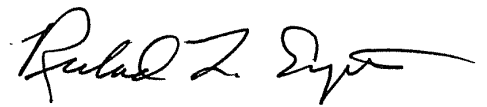
19. Dr. Alford claims that voters are influenced more by the political party of candidates than by the race of the candidates. He concludes therefore that the racial polarization in voting we both observe is motivated by partisanship, not race. His evidence for this however does not survive scrutiny. As explained above, Dr. Alford relies primarily on voting in white on white elections to support his conclusion that

party trumps race among voters. These elections contain no African American candidates, and therefore no “cue,” as he says, to compare to a partisan cue.

20. After reading the Dr. Alford’s report, I conclude, as I did in my initial report, that African Americans constitute a cohesive voting group in the 10-county metro Atlanta area, and the non-African American majority has voted sufficiently as a bloc to defeat those choices.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on October 19, 2018, in Durham, NC.

A handwritten signature in black ink, appearing to read "Richard L. Engstrom", written over a horizontal line.

Richard L. Engstrom