EXHIBIT 1

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

GEORGIA STATE CONFERENCE OF THE NAACP, *et al.*, Plaintiffs, v. BRIAN KEMP, in his official capacity as Secretary of State for the State of Georgia, Defendant.	*	Case No. 1:17-cv-01427-TCB-WSD-BBM CONSOLIDATED CASES
AUSTIN THOMPSON, *et al.*, Plaintiffs, v. BRIAN KEMP, in his official capacity Secretary of State of the State of Georgia, Defendant.	*	

PLAINTIFFS' OBJECTIONS TO DECLARATIONS OFFERED BY DEFENDANT IN RESPONSE TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Come now Plaintiffs with the following objections to the declarations offered by Defendant in opposition to Plaintiffs' motion for a preliminary injunction:

1. Objections to the Declaration of Gina Harbin Wright (Doc. 137-1)

Objections to ¶5: The first paragraph of ¶5 should be disregarded based upon the "sham affidavit" rule because the averments contained therein contradict the declarant's prior sworn deposition testimony.

The "sham affidavit" rule allows the Court to disregard an affidavit as a "sham" if it directly contradicts earlier deposition testimony in a manner that cannot be explained. *Van T. Junkins & Assoc, Inc. v. U.S. Indus., Inc.*, 736 F.2d 656, 657-58 (11th Cir. 1984).[1] The rule operates to exclude unexplained discrepancies and inconsistencies that create "transparent shams," opposed to those which merely raise issues of credibility or go to the weight of the evidence. *Tippens v. Celotex Corp.*, 805 F.2d 949, 953-954 (11th Cir. 1986), *rehearing denied*, 815 F.2d 66 (11th Cir. 1987).

[1] Although the rule is most commonly used when a party attempts to create an issue of fact to avoid summary judgment where none exists, as in *Van T. Junkins & Assoc, Inc.*, *supra*, there is no reason why the rule is not equally applicable in the context of a motion for preliminary injunction where a party opposes the motion by offering declarations containing unexplained material discrepancies with prior sworn deposition testimony in an attempt to defeat the motion.

Here, Ms. Wright avers in her declaration, "***I alone*** worked on that portion of the HB 566 (2015) redistricting bill that touched any part of Gwinnett and Henry County, including HD 105 and HD 111." Wright Decl., ¶5 (emphasis added). In her deposition, however, Ms. Wright admitted that she did not work alone on the redistricting plans, but rather, worked in conjunction with the House chair of the redistricting committee and members of the Georgia General Assembly in creating the districts in the plans that would eventually become HB 566 in 2015:

> "I worked with members of the General Assembly, primarily with the chairman of our House committee, to create districts as they, you know, were looking to see what they, you know, might look like as part of what would make up that bill."

Vol. 1, Wright depo., 15:11-16:1-8.

Ms. Wright also testified that when drawing redistricting plans, "we work with, you know, a member and whatever their criteria are, and we work on it and work on it and work on it." Vol. 1, Wright depo., 17:9-18:1. While Ms. Wright testified at deposition she was the "primary" person who used the Maptitude program for drawing the districts in the 2015 redistricting plan that would become HB 566, she acknowledged that her staff may have also used the Maptitude program when they met with House members to consider options for the redistricting plan. Vol. 1, Wright depo., 16:13-23. Ms. Wright was also unable to rule out the possibility that one of her staff members, Dan O'Connor, played a role

in the 2015 redistricting process. Vol. 1, Wright depo, 192:17-193:14. Thus, the Court should disregard ¶5 of Ms. Wright's declaration because of its unexplained material discrepancies with her previous, sworn deposition testimony under the sham affidavit rule.

Objections to ¶¶7-41: Plaintiffs object to paragraphs ¶¶7-41 under the sham affidavit rule. See *Van T. Junkins & Assoc, Inc.*, *supra*, 736 F.2d at 657-58 and *Tippens*, *supra*, 805 F.2d at 953-954.

In her declaration, Ms. Wright claims she did not look at racial data in the Maptitude program at the precise moment she finalized the redistricting plans in an attempt to characterize her drawing of the redistricting plans as race neutral. However, Ms. Wright's declaration is contravened by the testimony and contemporaneous documents of several key players in this case, including that of Ms. Wright herself.[2] For example, Ms. Wright admitted that she considered racial data when she worked on the redistricting plans for both HD 105 and HD 111:

> "Racial data, when I worked on both of these districts, was not the first thing that I ever looked at. **It was something I did consider down the line**, but all of these criteria were, you know, in a particular order that I usually review when I'm working on something…. **To say that I never looked at**

[2] Representative Nix also testified that he was present in a meeting where "Wright is clicking around and showing proposed changes," with "tables displayed that showed a racial breakdown of the population in the various districts." Nix depo., 148:8-150:12.

> **race data, no, I did eventually look at it to make sure that I did not do significant harm in that respect as well. So, yes, I did look at race data**."

Vol. 1, Wright depo., 29:2-30:9 (emphasis added).

Ms. Wright also admitted in her deposition testimony she was aware the proposed plan for HD 105 had a lower percentage of black and Hispanic voters than the pre-2015 plan because this information would have been available to her in the "pending changes box" in the Maptitude program. Vol. 1, Wright depo., 195:1-19.

In fact, Ms. Wright admitted her usual practice is to use the "pending changes box" in the Maptitude program and that the pending changes box shows how numbers (demographic and political) change when a geography is selected. Vol. 1, Wright depo., 104:20-105:23.

Objections to ¶42: Plaintiffs object to ¶42 of Ms. Wright's declaration based upon the sham affidavit rule. See *Van T. Junkins & Assoc, Inc.*, *supra*, 736 F.2d at 657-58; and *Tippens*, *supra*, 805 F.2d at 953-954.

In her declaration, Ms. Wright alleges Representative Chandler never discussed with her any desired racial effect of the redistricting. However, Ms. Wright admitted that she completed two redistricting plans for HD 105 and 111 in the Spring of 2014, including a custom statistical report which contained African-American and Latino population data, and shared the HD plan with Representative

Chandler either via email or in person. Vol. 2, Wright Dep. 299:19-302:16; Docs. 137-42, 137-43. Ms. Wright also testified she had a discussion with Representative Chandler about the changing demographics in Gwinnett County and that Ms. Wright "most likely" brought up the subject of the changing demographics herself. Vol. 1, Wright depo., 23:5-24:15.

Objections to ¶43: Plaintiffs object to ¶43 of Ms. Wright's declaration based upon the sham affidavit rule. See *Van T. Junkins & Assoc, Inc.*, *supra*, 736 F.2d at 657-58; and *Tippens*, *supra*, 805 F.2d at 953-954.

In her declaration, Ms. Wright claims unambiguously that she did not discuss the 2015 legislative redistricting with her staff member, Dan O'Connor, and claims he had no responsibility for drawing any part of the redistricting plan included HB 566. However, when Ms. Wright was asked about Mr. O'Connor's role in the 2015 redistricting and whether she discussed the 2015 plan with him, Ms. Wright testified:

> "Q During the course of the 2015 redistricting plan, did you consult at all with Mr. O'Connor?
>
> A Can you ask that again?
>
> Q Yes. During the development of the redistricting plan that was passed in 2015, did you consult with Mr. O'Connor at all?
>
> A What do you mean by consult? I mean, I speak with him pretty much daily. He's on my staff.

> Q Fair enough. What role, if any, did Mr. O'Connor play in the 2015 redistricting plan?
>
> A **I don't recall** discussing the boundary lines or the proposed boundary lines with him.
>
> Q How about anything else with respect to the plan?
>
> A **I don't recall**.
>
> **Q So you could have, you could have had discussions with him about the plan? You just don't remember one way or the other?**
>
> **A It's possible."**
>
> Vol. 1, Wright depo, 192:17-193:14 (emphasis added).

Thus, Ms. Wright's unexplained, unambiguous denial of Mr. O'Connor's role in her declaration is contrary to her lack of professed lack of recall about his involvement in her prior sworn deposition testimony and should be disregarded under the sham affidavit rule.

2. Objections to the Declaration of Tina Lunsford (Doc. 137-5)

Objections to ¶4: Plaintiffs object to ¶4 of Ms. Lunsford's declaration on the grounds of relevancy under F.R.E. 401 and because of Ms. Lunsford's failure to establish personal knowledge under F.R.E. 602. To the extent the averments in ¶4 are being offered as expert opinion, they are objectionable under F.R.E. 702(b), (c) and (d) because Ms. Lunsford fails to establish her opinion is based on

sufficient facts or data; is the product of reliable principles and methods; or that she has reliably applied the principles and methods to the facts of the case as required for such opinion testimony.

Objections to ¶6: Plaintiffs object to Ms. Lunsford's estimated costs of conducting a special election in ¶6 because Ms. Lunsford fails to establish any factual foundation for the stated cost estimates. Ms. Lunsford also fails to establish any factual foundation for her opinion that the costs would triple if the special election was not on the same ballot as a General Primary or General Election.

Objections to ¶8: Plaintiffs object to the first paragraph of ¶8 on the ground that it is unintelligible in that it refers to "notices identified in paragraph 7," because there is no paragraph 7 in Ms. Lunsford's declaration.

3. Objections to Declaration of Lynn Ledford (Doc. 137-6)

Objections to ¶5: Plaintiffs object to Ms. Ledford's allegations in ¶5 of her declaration that special elections are "not very common" and that existing polling locations may be unavailable in the event the Court orders a special election. Ms. Ledford fails to establish a factual foundation supporting these conclusions and has not established she has personal knowledge of foundational facts supporting these conclusions as required by F.R.E. 602. In fact, Ms. Ledford's assertion that special elections are "not very common" is belied by the election history data maintained

on Defendant Kemp's own website which shows there have been no fewer than 57 Georgia House, Senate and Congressional special elections since 2010. *See* http://sos.ga.gov/index.php/Elections/current_and_past_elections_results (last checked April 9, 2018). This figure does not include special primary or runoff elections, nor does this total include local special elections.

Therefore, Plaintiffs' objections should be sustained under F.R.E. 401 and F.R.E. 602.

Objections to ¶8: Plaintiffs object to Ms. Ledford's speculative averment in ¶8 of her declaration that it would take "several months" for Gwinnett County to implement changes to HD 104 and 105 if the Court grants remedial relief because the declaration fails to establish a sufficient factual foundation for this vague and conclusory statement. This is particularly true where Plaintiffs are only asking that the remedial special elections be conducted under the House District 104 and 105 boundaries in Gwinnett County as they existed prior to the 2015 redistricting. Ms. Ledford also ignores the fact that Defendant Kemp has repeatedly conducted special elections on short notice, including the recent special election for HD 111,

which was conducted within 34 days, with candidate qualifying completed in just three days.[3]

Objections to ¶9: Plaintiffs object to ¶9 of Ms. Ledford's declaration on relevancy grounds under F.R.E. 401 because Senate Bill 403 was not passed by the Georgia General Assembly during the 2017-2018 legislative session and would thus have no impact in the event the Court orders remedial relief here. *See* http://www.legis.ga.gov/Legislation/en-US/display/20172018/SB/403.

Objections to ¶10: Plaintiffs object to ¶10 of Ms. Ledford's declaration on the grounds that Ms. Ledford fails to establish personal knowledge of the foundational facts supporting her speculative conclusions that voters would be confused, turnout would be low and voters would lose confidence in the electoral process if the Court granted remedial relief and ordered special elections in HD 104 and HD 105. Thus, these conclusions are objectionable under F.R.E. 602. Plaintiffs also object to the extent these conclusions are offered as expert opinion under F.R.E. 702(b), (c) and (d) because Ms. Ledford fails to establish her opinions

[3] *See* Call for Special Election for State Representative, District 111, http://sos.ga.gov/admin/uploads/HD111_Call1.pdf (last checked Apr. 9, 2018). Defendant also conducted six special elections on November 7, 2017, apparently with no complications. *See* "Calls for Special Elections," http://sos.ga.gov/index.php/elections/calls_for_special_elections.html (last visited Apr. 9, 2018).

are based on sufficient facts or data; is the product of reliable principles and methods; or that she has reliably applied the principles and methods to the facts of the case as required for such opinion testimony.

4. Objections to the Declaration of Howe Taing (Doc. 137-2)

Plaintiffs object to the Declaration of Howe Taing under F.R.E. 401 (relevancy) and F.R.E. 602 (personal knowledge). Mr. Taing does not allege he has personal knowledge of the underlying communications and exchanges of information between Representative Chandler, Dan O'Connor and the Gwinnett County Board of Elections. The very limited scope of his knowledge, i.e., a post-hoc review of how emails and attachments were electronically archived, does not establish that Representative Chandler did not receive voter registration data for her House district that included racial demographic data. Thus, to the extent Defendant offers Mr. Taing's Declaration as evidence Representative Chandler did not receive this data, it should be excluded as irrelevant under F.R.E. 401 and because Mr. Taing lacks personal knowledge of those facts under F.R.E. 602.

5. Objections to the Declaration of Chris Harvey (Doc. 137-4)

Objections to ¶5: Plaintiffs object to **¶5** of Mr. Harvey's Declaration on the grounds of relevancy (F.R.E. 401) and because Mr. Harvey's conclusory statement that turnout for special elections is "considerably lower" than in general or primary

elections is not supported by any factual foundation. In addition, Mr. Harvey fails to establish he has personal knowledge of the underlying facts supporting this conclusory statement as required under F.R.E. 602.

Objections to ¶¶7-8: Plaintiffs object to Mr. Harvey's highly speculative and conclusory averments in ¶¶7-8 on the grounds that his statements are not supported with any or adequate foundational facts. Mr. Harvey also fails to establish that he has personal knowledge of the facts underlying his conclusory statements as required by F.R.E. 602. In fact, contrary to Mr. Harvey's assertion that elections in Georgia are generally scheduled years in advance, there have been no fewer than 57 Georgia House, Senate and Congressional special elections in Georgia since 2010.[4] To the extent that Mr. Harvey's opinions are offered as expert opinions, they are objectionable under F.R.E. 702 (b), (c) and (d) because Mr. Harvey fails to establish his opinions are based on sufficient facts or data; are the product of reliable principles and methods; or that he has reliably applied the principles and methods to the facts of the case as required for such opinion testimony.

[4] See, http://sos.ga.gov/index.php/Elections/current_and_past_elections_results. This does not include special primary or runoff elections, nor does the total include any special local elections.

4. Objections to the Declaration of Michael Barnes (Doc. 137-3)

Plaintiffs object to the Declaration of Michael Barnes on relevancy grounds under F.R.E. 401. While Mr. Barnes' declaration discusses the current timeline and processes relating to the production and distribution of ballots for the upcoming primary and general elections, his declaration fails to show that his office would be unable to produce and distribute ballots as necessary in the event the Court orders a special election in this case. Given the fact that there have been no fewer than 57 Georgia House, Senate and Congressional special elections since 2010 in which ballots had to be produced and distributed outside of the regularly set election schedule, Mr. Barnes' declaration shows no reason why he and his staff would be unable to produce and distribute ballots in the event the Court orders special elections in this case.

Dated: April 9, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the forgoing PLAINTIFFS' OBJECTIONS TO DECLARATIONS OFFERED BY DEFENDANT IN RESPONSE TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION was prepared double-spaced in 14-point Times New Roman pursuant to Local Rule 5.1(c).

By: */s/ Julie M. Houk*
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Lawyers' Committee for Civil Rights Under Law

CERTIFICATE OF SERVICE

This is to certify that on April 9, 2018, I electronically filed the **Certificate of Service** serving **PLAINTIFFS' OBJECTIONS TO DECLARATIONS OFFERED BY DEFENDANT IN RESPONSE TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all counsel of record.

By: */s/ Julie M. Houk*
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