

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION**

THE CHRISTIAN MINISTERIAL ALLIANCE,
PATRICIA BREWER, CAROLYN BRIGGS,
LYNETTE BROWN, MABLE BYNUM, and
VELMA SMITH on behalf of themselves and all
other similarly situated persons,

Plaintiffs,

v.

JOHN THURSTON, in his official capacity as the
Secretary of State of Arkansas,

Defendant.

Civil Action

Case No. 4:23-cv-00471-DPM-DRS-JM
(three-judge court)

**PLAINTIFFS' RESPONSES TO DEFENDANT'S STATEMENT OF UNDISPUTED
MATERIAL FACTS, STATEMENT OF MATERIAL ISSUES OF FACT TO BE TRIED,
AND STATEMENT OF ADDITIONAL MATERIAL FACTS**

In connection with Plaintiffs’ Opposition to Defendant’s Motion for Summary Judgment, and in accordance with Local R. 56.1(b) and the Amended Final Scheduling Order (ECF No. 50) Plaintiffs submit the following in response to Secretary Thurston’s Local Rule 56.1 Statement of Undisputed Material Facts, (ECF No. 60), statement of material questions of fact, and statement of material facts as to which a genuine dispute exists to be tried.

I. RESPONSES TO SECRETARY THURSTON’S LOCAL RULE 56.1 STATEMENT OF UNDISPUTED MATERIAL FACTS

1. *After the 2020 Census, Arkansas’s population shifted unevenly between congressional districts. (Bryan Rep. 30.)*

Undisputed. Mot. Ex. 3, Cooper Rep. ¶ 45–46, fig. 14.

Figure 14: 2011 Benchmark Plan – 2020 Census

District	Population	Deviation	% Deviation	% 18+ Black	% 18+ Latino	% 18+ NH White
1	716388	-36493	-4.85%	17.23%	3.18%	75.48%
2	769391	16510	2.19%	22.64%	5.77%	66.33%
3	839147	86266	11.46%	3.48%	13.03%	73.15%
4	686598	-66283	-8.80%	18.84%	5.18%	71.27%

2. *Due to this population change, the General Assembly had to enact a new congressional map to adhere to the one-person, one-vote requirement. (Cooper Dep. 100:2-11).*

Undisputed.

3. *The ideal population for each congressional district after the 2020 Census was 752,881. (Bryan Rep. 28.)*

Undisputed. Mot. Ex. 3, Cooper Rep. at Cooper Rep. ¶ 33.

4. *After the 2020 Census, District 1 (“D1”) was underpopulated by 36,493; D2 was overpopulated by 16,510; D3 was overpopulated by 86,266; and D4 was underpopulated by 66,283 relative to the ideal population for each district. (Bryan Rep. 28-29.)*

Undisputed. Mot. Ex. 3, Cooper Rep. ¶ 45–46, fig. 14.

5. *The 2011 Plan split four counties; the Enacted plan splits only two. (Cooper Rep. 36.)*

Disputed. The 2011 enacted plan split five, not four, counties. The 2021 enacted plan (“the Plan”) also splits Pulaski county, which was not split under the 2011 plan—in fact, the Plan splits Pulaski County three ways. Mot. Ex. 3, Cooper Rep. ¶ 62, fig. 22.

6. *Former Senator Jason Rapert, Chair of the Senate State Agencies Committee, testified that the desire to split fewer counties than the 2011 plan drove the three-way split of Pulaski County. (Rapert Dep. 20:20-24.)*

Disputed in part. Undisputed that former Senator Jason Rapert gave testimony to this effect. The cited deposition testimony reads as follows:

The fact is that the boundaries of three congressional districts clearly met around Pulaski County and being the most populous county in the state, that is the logical and easiest place to get that population separated where it's manageable.

Mot. Ex. 10, Rapert Dep. Tr. at 20:20–24.

Disputed that Senator Rapert’s testimony accurately characterizes the motivation behind the Plan, however. The contemporaneous legislative record shows that if avoiding county splits were actually the Legislature’s motivation, it could have and would have enacted a very different map. Proposed maps were introduced that kept population deviations below 1% (a stated goal of the Legislature), kept all counties and cities whole, and respected certain communities of interest, including Pulaski County. Mot. Ex. 11, Burch Rep. at 5, 25, 37. Eleven bills were introduced that did not split any counties; and fourteen bills were introduced that did not split Pulaski County. Mot. Ex. 11, Burch Rep. at 78–79, Appendix C. In addition, in the context of this litigation, Plaintiffs’ expert, Bill Cooper, introduced Alternative Plan 1 to show that the Legislature could have enacted a plan that, on balance, performs equally well or better than the Plan in adhering to traditional redistricting principles and equalizing populations among districts without cracking Pulaski County. Mot. Ex. 3, Cooper Rep. ¶ 46.

7. *According to Sen. Rapert, Pulaski County was “the logical and easiest place to get” the necessary “population separated where it’s manageable” because “the boundaries of three congressional districts clearly met around Pulaski County and [it] being the most populous county in the state[.]” (Rapert Dep. 20:202-24. [sic])¹*

Disputed in part. Undisputed that Senator Rapert gave testimony to this effect. The cited testimony, reads:

But those are two counties [Sebastian and Pulaski] where we had to simply draw a line and I felt it was prudent and I felt it was fair that we did that in the least counties possible. The fact is that the boundaries of three congressional districts clearly met around Pulaski County and being the most populous county in the state, that is the logical and easiest place to get that population separated where it's manageable.

Mot. Ex. 10, Rapert Dep. Tr. 20:17–24.

Disputed that Senator Rapert’s testimony accurately characterizes the motivation behind the Plan, however. Senator Rapert’s testimony is not credible. It was possible to rebalance the populations among the Congressional districts without splitting any counties or cities, a fact that both Republican and Democratic legislators stated on the record. Mot. Ex. 11, Burch Rep. at 5, 52–54; Mot. Ex. 14, Burch Dep. Tr. at 70:25–72:9. Eleven bills were introduced that did not split any counties; and fourteen bills were introduced that did not split Pulaski County. Mot. Ex. 11, Burch Rep. at 78–79, Appendix C. In addition, in the context of this litigation, Cooper’s Alternative Plan 1 shows that the Legislature could have enacted a plan that, on balance, performs equally well or better than the Plan in adhering to traditional redistricting principles and equalizing populations among districts without cracking Pulaski County. Mot. Ex. 3, Cooper Rep. ¶ 46.

¹ Plaintiffs presume the citation should read Mot. Ex. 10, Rapert Dep. Tr. at 20:20–24.

8. ***To Sen. Rapert’s knowledge, race was not a consideration in the drawing of the Enacted Plan. (Rapert Dep. 12:25-13:1.)***

Disputed. Senator Rapert’s full answer to the question posed was as follows:

Was it Your position as Senate Committee chair that You could not consider race as a factor in drawing Congressional District boundaries during the 2021 Congressional Redistricting Process? If so, explain Your basis for that position.

Yes. It was my opinion that race would not be a factor, and I publicly made statements about that. I finally got so tired of hearing some of the Democrat members that were trying to interject or infer, I felt it was insulting to the integrity of the process and made statements on the Senate floor to that effect. So yes, I did not think that race should be a factor or would be a factor in our maps. They weren't.

Mot. Ex. 10, Rapert Dep. Tr. at 12:16–13:1.

But Senator Rapert’s post-hoc deposition testimony is belied by his prior contemporaneous statement during a floor debate, in which he testified that he requested data about the racial makeup of the 2011 enacted plan to compare to the racial makeup of the proposed map. Mot. Ex. 11, Burch Rep. at 47–48 (quoting 10:38:33 Oct. 6, 2021 Senate Chamber Meeting).

Senator Rapert’s testimony is also contradicted by the weight the evidence developed in discovery that race was indeed the predominant factor in the drawing of CD2. That evidence includes, but is not limited to, the following:

Racial demographic data—but not political election results or voter registration information by party—was uploaded to AutoBound. Ex. D, Davenport Dep. Tr. at 84:24–84:5. The racial demographics available on the AutoBound software included granular details allowing map-drawers to easily view county and precinct data changes. *Id.* at 72:9–73:2, 77:1–5, 125:16–21, 164:4–21. AutoBound was the only software that the Bureau of Legislative Research (“BLR”) used to create proposed Congressional maps for the Legislature. *Id.* at 44:10–12, 74:7–

74:10, 96:11–14. Every proposed map that was introduced in the Arkansas Legislature was drafted with the assistance of BLR legislative staffers. *Id.* at 43:17–20, 96:11–97:2. BLR often drafted maps with legislators in the room to give instructions and direct adjustments. Mot. Ex. 11, Burch Rep. at 46; Ex. E, Bowen Dep. Tr. at 103:14–21, 110:14–22; Ex. D, Davenport Dep. Tr. at 52:14–16, 206:4–20. As the map-drawers made changes, the demographic changes, including racial demographics, updated on the screen in real-time. Ex. E, Bowen Dep. Tr. at 71:25–72:6, 73:3–12, 131:8–12, 132:13–17; Ex. F, Hejazi Dep. Tr. at 62:21–63:23, 66:2–13. Senator Rapert knew that the maps displayed racial data. Mot. Ex. 11, Burch Rep. at 45 (quoting Rapert October 6, 2021 remarks in the Senate).

Plaintiffs’ expert, Dr. Baodong Liu, offers unrebutted expert opinion, based on robust statistical analysis that: (1) race was a significant factor in the configuration of CD2 in the Plan; (2) voters’ partisan preference is not a statistically supportable alternative explanation for the observed differences in how white and Black voters were sorted into and out of CD2; and (3) voters’ race as compared to their partisan preference better explains the changes to CD2 specifically within Pulaski County. *See generally* Ex. C, Liu Rep.

9. *Sen. Rapert recalled “tons of people” using Dave’s Redistricting website to pull up partisan data during the districting process. (Rapert Dep. 24:11-14.)*

Disputed. The full text of the answer Defendant cites is as follows:

So, I think what the question is asking is were there conversations among members about partisanship. Again, from my perspective, it was all about the maps and trying to make sure that they were equal based upon population. If partisanship was ever discussed, I would say it would just be a side note that somebody made about that. But honestly, the clear guidance was to get these districts made as equal as you possibly could. The only time that I can recall just trying to pull this up from three years ago is that obviously, this Dave's Redistricting site had information and there was tons of people that were trying to utilize that. They were even publishing it on social media. There were those maps floating around

everywhere and they would discuss these different makeups and different factors, so I think that's the question actually that I kind of stumbled myself and almost asked for that question to be repeated, so I appreciate Counsel for bringing that back up. Again, I think that these questions could have been worded a lot more clearly.

Mot. Ex. 10, Rapert Dep. Tr. at 24:4–21.

It is unclear from Senator Rapert's response that the "people" using Dave's Redistricting were involved in the map-drawing process or that the purpose of using Dave's Redistricting was to analyze partisan data. By comparison, BLR legislative staff did not use Dave's Redistricting to analyze partisan data. Ex. D, Davenport Dep. Tr. at 85:12–14, 85:25–86:2, 87:8–10; 262:18–20; Ex. E, Bowen Dep. Tr. at 96:25–97:5. Moreover, Senator Rapert in that same answer asserts that the motive for the Plan was equalizing population and that partisan considerations—if any legislator mentioned them at all—were a "side note."

10. *Every Republican legislator who spoke on the topic of race during the districting process denied that race was or should be a consideration. (Burch. Rep. 42; 48-89[sic]².)*

Disputed. This is both a mischaracterization and incomplete. The statements of the Republican legislators, quoted at page 42 of the Burch Report, that race should not be considered were "made in response to redistricting plans when map drawers said that they were considering minority representation under the Voting Rights Act." Mot. Ex. 11, Burch Rep. at 42. These same legislators had been expressly told, including by BLR legislative staff, that they *could* consider minority representation under the Voting Rights Act. *Id.* at 38–40. The quotes from page 48 of the Burch Report were made in response to legislators being warned that the proposed map would harm Black voters. *Id.* at 48. Defendant also omits other key quotes supporting Dr.

² There is no page 89 to the Burch report. Plaintiffs presume the citation was intended to read Burch Rep. 42; 48-49.

Burch’s finding that Republicans also spoke on the topic of race to “raise[] concerns about the racial effects of the [proposed] map.” *Id.* at 44. For instance, Senator Ballinger (R) stated that the map “still ha[d] some racial issues that can be fixed.” *Id.* (quoting 11:54:26 Oct. 5, 2021 Senate Chamber Meeting).

11. *Several Republican legislators discussed partisan considerations during the districting process. (Burch Rep. 51053[sic]³.)*

Disputed to the extent any stray and limited remarks about partisan considerations reflect the actual criteria and goals the Legislature debated and considered in line-drawing. The cited portion of the Burch Report concludes that “[a]lternative explanations for adopting the map, particularly those related to partisanship, are not discussed much in the legislative debates.” Mot. Ex. 11, Burch Rep. at 51. Dr. Burch further explained that “supporters of HB1982/SB743 [which became the enacted Plan] did make a limited number of references to partisan motivations in the legislative hearings and debates. However, these references were few and far between and were made only in response to criticism about the racial effects of the map.” *Id.* Dr. Burch further concluded that “[i]n addition to the fact that there is very little concrete evidence on the record that legislators were motivated by partisan gains, several supporters of the map outright deny the importance of partisanship to the process.” *Id.* at 52–53 (reciting remarks of Senator Hester (R), Senator Clark (R), Senator Rapert (R), Senator Pilkington (R), and Senator Johnson (R)). During discovery, Defendant also repeatedly disavowed that any public statements made during the legislative process were evidence of partisan motivation. Ex. K,

³ There is no page 51053 to the Burch report. Plaintiffs presume the citation should read Burch Rep. 51–53.

Bridges Dep. Tr. at 190:13–191:21; Ex. L, Def’s Ltr. & Supp. Resp. to Pls’ Interrog. No. 2, 4–15 (Aug. 14, 2024).

12. *The Enacted Plan splits just one more municipality than the 2011 Plan. (Cooper Rep. 36.)*

Disputed to the extent Defendant fails to distinguish between “split municipalities and “municipal splits.” Split municipalities are municipalities that have been split. Municipal splits are the number of pieces of municipalities in a map. *See* Ex. I, Corrected Cooper Rebuttal Rep. ¶ 13. The Plan has one more split municipality and two more municipal splits than the 2011 Plan, which include the cities of Little Rock and North Little Rock that have significant Black populations. Mot. Ex. 3, Cooper Rep. ¶ 62b fig. 22.

13. *The Enacted Plan splits fewer school districts than the 2011 Plan. (Cooper Rep. 36.)*

Undisputed except that the enacted Plan split a heavily-Black school district in Pulaski County across the boundaries of congressional districts. *See* Mot. Ex. 1, Bryan Rep. at 99–100, Appendix C.5.

14. *The Enacted Plan is more compact than the 2011 Plan. (Cooper Rep. 36.)*

Undisputed, except that the enacted Plan splits heavily-Black neighborhoods in southeast Pulaski that had been whole and compact in CD2 prior to the 2020 Congressional redistricting. Mot. Ex. 3, Cooper Rep. ¶ 62.

15. *The Enacted Plan has a core retention of over 92%. (Cooper Rep. ¶ 63.)*

Undisputed as to the Plan as a whole but disputed as to the core retention for the Black population within the district at issue, CD2. Mot. Ex. 1, Bryan Rep. at 53, table VII.1. Moreover, when legislators made statements about what they considered important criteria in

considering congressional maps, core retention was never mentioned. Mot. Ex. 14, Burch Dep. Tr. at 50:13–51:20.

Table VII.1 2021 Enacted Plan Differential Core Retention

Core Retention	Total Pop.	WNH	APB	HISP
D1	96.2%	95.4%	99.0%	97.4%
D2	94.6%	97.7%	88.4%	85.9%
D3	85.0%	81.7%	90.5%	93.9%
D4	94.2%	92.8%	99.6%	96.2%
Total	92.2%	91.5%	94.5%	93.0%

Source: 2020 U.S. Census PL94-171, BGD calculations

16. *The Enacted Plan has improved partisan outcomes for the Republican Party compared to the 2011 Plan. (Cooper Rep. ¶ 64)*

Undisputed but is missing important context. Both the Plan and the 2011 Plan create an entirely Republican Congressional delegation, including an electorate likely to vote for a Republican representative in CD2. *See* Mot. Ex. 7, Bryan Rebuttal Rep. ¶¶ 69-70, table VII.A.1. Based on the results of specific electoral contests, which there is no evidence were considered by the Legislature in drawing the Plan, Defendant’s expert, Bryan projects the Republican candidate’s margin of victory for the Congressional race in CD2 to be 1.9% greater in the Plan versus the 2011 Plan (60% versus 58.1%). Mot. Ex. 7, Bryan Rebuttal Rep. at 32, table VII.A.2.

17. *The Enacted Plan does not pair incumbents. (Cooper Rep. ¶ 63.)*

Undisputed.

18. *The 2011 Plan’s D2 Black Voting Age Population (“BVAP”) under the 2020 Census figures is 22.64%, compared with the Enacted Plan’s 20.33%. (Cooper Rep. 36.)*

Undisputed, Mot. Ex. 3, Cooper Rep. ¶ 62, fig. 22, but is missing important context. The more than 2% decrease in BVAP in CD2 under the Plan as compared to the 2011 Plan erases the

effect of the 10% BVAP growth in Pulaski County between 2010 and 2020. *See* Mot. Ex. 1, Bryan Rep. at 90, Appendix A.2.

19. *Alternative Plan 1 has a BVAP of 23.15% in D2.*

Undisputed. Mot. Ex. 3, Cooper Rep. ¶ 67, fig. 24.

20. *Alternative Plan 1 does not give the same level of partisan advantage to Republicans as the Enacted Plan. (Bryan Reb. Rep. 30.)*

Disputed. Defendant's expert, Thomas Bryan, projects that both Cooper's Alternative Plan 1 and the Plan result in CD2 being a Republican-performing district. Mot. Ex. 7, Bryan Rebuttal Rep. ¶¶ 69-70, table VII.A.1.

21. *The Enacted Plan has a higher core retention than Alternative Plan 1. (Cooper Rep. 40.)*

Undisputed as to the Plan as a whole. The Plan has an overall core retention of 92.16% whereas Cooper's Alternative Plan 1 has an overall and immaterially lower core retention of 87.53%. Mot. Ex. 3, Cooper Rep. ¶ 68, fig. 25. However, disputed as to core retention for the Black population in the district at issue, CD2. Mot. Ex. 1, Bryan Rep. at 53, table VII.1. Moreover, when legislators made statements about what they considered important criteria in considering congressional maps, core retention was never mentioned. Mot. Ex. 14, Burch Dep. Tr. at 50:13–51:20.

22. *Alternative Plan 1 moves over twice as much of the Any Part Black ("APB") population from their previous district as the Enacted Plan. (Bryan Reb. Rep. 28.)*

Undisputed but is missing important context. Cooper's Alternative Plan 1 rebalances the populations and respects traditional redistricting principles while not splitting Pulaski County and Black communities within it, which were purported objectives of the Legislature after the 2020 census. Mot. Ex. 3, Cooper Rep. ¶¶ 10, 62.

23. *Alternative Plan 2 has a BVAP of 22.26% in D2. (Cooper Rep. ¶ 42[sic]⁴.)*

Undisputed. Mot. Ex. 3, Cooper Rep. ¶ 72, fig. 28.

24. *Alternative Plan 2 does not give the same level of partisan advantages to Republicans as the Enacted Plan. (Cooper Rep. 43.)*

Disputed. Bryan projects that both Cooper's Alternative Plan 2 and the Plan result in CD2 being a Republican performing district. Mot. Ex. 7, Bryan Rebuttal Rep. ¶¶ 69–70, table VII.A.1. However, using results from certain elections, which there is no evidence the Legislature considered in drawing the Plan, Bryan projects the Republican candidate's margin of victory for the Congressional contest in CD2 to be 0.6% greater in the Plan than in Cooper's Alternative Plan 2 (60% versus 59.4%). *Id.* at 32, table VII.A.2. Still, the Republican candidate's margin of victory in Cooper's Alternative Plan 2 is 1.3% greater than in the 2011 Plan (59.4% vs 58.1%). *Id.* Further, Cooper's Alternative Plan 2 indicates a clear partisan advantage performance when measured by specific election results, namely the 2020 Presidential election and the 2022 U.S. Senate election. Ex. I, Corrected Cooper Rebuttal Rep. ¶ 21.

25. *The Enacted Plan has a higher core retention than Alternative Plan 2. (Cooper Rep. 42.)*

Undisputed as to the Plan as a whole. The Plan has an overall core retention of 92.16% whereas Cooper's Alternative Plan 2 has an overall core retention of 80.31%. However, disputed as to core retention for the Black population in the district at issue, CD2. Mot. Ex. 1, Bryan Rep. at 53, table VII.1; Mot. Ex. 3, Cooper Rep. ¶ 72, fig. 28. Moreover, when legislators made statements about what they considered important criteria in considering congressional maps, core retention was never mentioned. Mot. Ex. 14, Burch Dep. Tr. at 50:13–51:20.

⁴ Plaintiffs presume the citation refers to Figure 28 on page 42.

26. *Alternative Plan 2 moves over three times as much of the APB population from their previous district as the Enacted Plan. (Bryan Reb. Rep. 28.)*

Undisputed but missing important context. Cooper's Alternative Plan 2 rebalances the populations and respects traditional redistricting principles while achieving comparable political performance as the Plan and keeping together Pulaski County and the longstanding Black communities within it. Mot. Ex. 3, Cooper Rep. ¶¶ 10, 70.

27. *Alternative Plan 3 has a BVAP of 20.33%.⁵*

Disputed, but not in material respects. In fact, Cooper's Alternative Plan 3 has a CD2 BVAP of 20.35%. Ex. I, Corrected Cooper Rebuttal Rep. ¶ 17, fig. 3.

28. *Alternative Plan 3 matches or exceeds the partisan performance for Republicans as compared to the Enacted Plan. (Cooper Reb. Rep. 9.)*

Undisputed. Ex. I, Corrected Cooper Rebuttal Rep. ¶¶ 20–23.

29. *The Enacted Plan has a higher core retention than Alternative Plan 3. (Cooper Reb. Rep. 9.)*

Undisputed as to the Plan as a whole. The Plan has an overall core retention of 92.16% whereas Plaintiffs' expert Cooper's Alternative Plan 3 has an overall core retention of 75.53%. Ex. I, Corrected Cooper Rebuttal Rep. ¶ 17, fig. 3. But disputed as to the Black population in the district at issue, CD2. Mot. Ex. 1, Bryan Rep. at 53, table VII.1. Moreover, when legislators made statements about what they considered important criteria in considering congressional maps, core retention was never mentioned. Mot. Ex. 14, Burch Dep. Tr. at 50:13–51:20.

30. *Alternative Plan 3 moves over four-and-a-half times as much of the APB population from their previous district as the Enacted Plan.*

Undisputed but missing key context. Cooper's Alternative Plan 3 rebalances the

⁵ Defendant did not provide a citation for this assertion.

populations and respects traditional redistricting principles while achieving comparable political performance as the Plan and keeping together Pulaski County and the longstanding Black communities within it. Ex. I, Corrected Cooper Rebuttal Rep. ¶ 7–8, 17, 20.

II. PLAINTIFFS’ LOCAL RULE 56.1 STATEMENT OF MATERIAL DISPUTED ISSUES OF FACT TO BE TRIED.

1. Whether race was a predominant factor for sorting a significant number of voters in CD2 under the Plan.
2. Whether traditional redistricting principles were subordinated to race in the design of CD2.
3. Whether the Plan was motivated by a desire to achieve defined partisan goals.
4. If race predominated in the design of CD2, did the Legislature have a compelling reason for it.
5. Whether the Plan had a racially discriminatory purpose to diminish or cancel out Black voting power.

III. PLAINTIFFS’ LOCAL RULE 56.1 STATEMENT OF ADDITIONAL MATERIAL FACTS

History of Discrimination

1. Arkansas has a long, judicially recognized history of racial discrimination. Ex. A, Smith Rep. at 4.
2. Since Reconstruction, both major political parties in Arkansas have a long history of enacting racially discriminatory policies and limiting the power of Black voters. Ex. A, Smith Rep. at 3–4.
3. Arkansas’s historical pattern of reducing Black voting power continues today. Ex. A, Smith Rep. at 21–23.
4. Arkansas has engaged in a pattern of cracking its Black population into different Congressional districts that has persisted through redistricting cycles for at least the past 35 years. Mot. Ex. 3, Cooper Rep. at 11–20.
5. The Black voting age population (“BVAP”) percentage in the Congressional district in Arkansas’s Congressional plans has consistently decreased each of the past four decades despite the statewide BVAP and BVAP percentage increasing over that same time period. Mot. Ex. 3, Cooper Rep. at 11–21.
6. Arkansas has never elected a Black representative to Congress. Ex. A, Smith Rep. at 22.

Lead Up to the Plan

7. Over the last thirty years, while Black Arkansans have seen their share of the statewide population steadily grow, white Arkansans have experienced a steady decline in their share of the population. *See* Mot. Ex. 3, Cooper Rep. at 13, fig. 2.
8. Between the 2010 and 2020 census, the statewide Black population grew by 5.82% while the white population declined by 5.06%. *See* Mot. Ex. 3, Cooper Rep. ¶ 37.
9. In Pulaski County, the Black population has grown by 10.03% while the white population has declined by 8.36%. *See* Mot. Ex. 3, Cooper Rep. ¶ 44.
10. Pulaski County has the highest concentration of Black Arkansans in the state, with 38.21% of the state's overall Black population. Mot. Ex. 3, Cooper Rep. ¶ 33.
11. Pulaski County has historically been entirely within CD2. *See* Ex. J, Cooper Rep. Exhibits C-1 to C-4.
12. Between the 2010 and 2020 census, the Black and other minority populations in CD2 increased while the white population decreased. *See* Mot. Ex. 3, Cooper Rep. ¶ 16–20, fig. 2; *see also* Mot. Ex. 11, Burch Rep. at 47–48.
13. Over the last decade, Black voters' growing electoral influence in Pulaski County led to the elections of Frank Scott Jr. as the city of Little Rock's first elected Black mayor since its founding 200 years ago, Eric Higgins, Pulaski County's first Black sheriff, and Terri Hollingsworth, its first Black county clerk. *See* Ex. A, Smith Rep. at 23.
14. In the 2020 Congressional election, Black State Senator Joyce Elliott (D-Little Rock) mounted a competitive challenge in CD2 against white incumbent, French Hill, though Senator Elliot ultimately lost. Ex. A, Smith Rep. at 22–23.
15. Congressman Hill employed racialized language in his campaign against Senator Elliott. Ex. A, Smith Rep. at 22–23.

Effect of the Plan

16. Despite the minimal changes needed to rebalance the population in CD2, the Plan moved 41,392 persons out of CD2, including 21,904 Black Arkansans from Pulaski County, well more than was needed to rebalance the population. *See* Mot. Ex. 3, Cooper Rep. ¶ 58, fig. 19.
17. The Plan reduced the BVAP in CD2 from 22.64% of the district's voting age population in the 2011 enacted plan (using the 2020 census population demographics) to 20.33%, despite Black population growth. *See* Mot. Ex. 3, Cooper Rep. ¶¶ 49, 62, fig. 22; Ex. B, Bryan Dep. Tr. #1 at 36:18–20.
18. The Plan split the heavily Black population in Pulaski County across three Congressional districts, thus cracking Black voters. *See* Mot. Ex. 3, Cooper Rep. ¶¶ 33, 49, fig. 16.

19. The Plan removed 14.55% of the Black population living in Little Rock from CD2 and 16.66% of the Black population living in North Little Rock from CD2. Mot. Ex. 3, Cooper Rep. ¶ 55.
20. There were stark racial disparities in the movement of voters into and out of CD2. Mot. Ex. 3, Cooper Rep. ¶¶ 50–58; Ex. C, Liu Rep. at 14–17; Ex. B, Bryan Dep. Tr. #1 at 175:7–13, 177:4–13, 177:17–178:1, 180:7–13; Mot. Ex. 1, Bryan Rep. at 101, Appendix D.1.
21. 94.27% of the white population in Pulaski County was kept in CD2, while only 85.56% of the Black population was retained in that district. See Mot. Ex. 3, Cooper Rep. ¶ 56.
22. White voters had a much greater likelihood of being moved into CD2, making up 93% of the voters moved as compared to a 1% share for Black voters. See Ex. C, Liu Rep. at 16, table 2, fig. 2.
23. Black voters had a greater likelihood of being moved out of CD2, making up 52% of the voters moved as compared to the 31% of white voters moved out of CD 2. See Ex. C, Liu Rep. at 16, table 2, fig. 2.
24. The Plan treats Black voters differently than white voters, even when those voters are affiliated with the same political party. See Ex. C, Liu Rep. at 16, table 2, fig. 2; Ex. B, Bryan Dep. Tr. #1 at 189:3–10, 189:18–190:3.
25. While there were fewer school districts split in the Plan relative to the 2011 enacted plan, it was not a one-for-one reduction. The Plan split school districts that had not been split before, including heavily Black school districts in CD2. See Ex. B, Bryan Dep. Tr. #1 at 217:8–14; Mot. Ex. 1, Bryan Rep. at 99–100, Appendix C.5–C.6.

The Map-drawers Considered Racial Data and Lacked Political Data

26. Every proposed map that was introduced in the Arkansas Legislature was drafted with the assistance of BLR legislative staffers based on direction from legislators. Ex. D, Davenport Dep. Tr. at 43:17–20, 96:11–97:2; Mot. Ex. 11, Burch Rep. at 46; Ex. E, Bowen Dep. Tr. at 103:14–21, 110:14–22.
27. Using the official redistricting software, AutoBound, BLR drafted maps exclusively at the direction of legislators, and often with legislators in the room to give instructions and direct adjustments. Ex. D, Davenport Dep. Tr. at 52:14–16, 206:4–20.
28. Racial demographic data was loaded and available on AutoBound. Ex. D, Davenport Dep. Tr. at 84:24–85:5.
29. By default, racial data was shown on the screen as maps were being drawn. Ex. F, Hejazi Dep. Tr. at 62:21–63:23, 66:2–12.

30. And as the map-drawers made changes, the demographic changes, including racial demographics, updated on the screen in real-time. Ex. E, Bowen Dep. Tr. at 71:25–72:6, 73:3–12, 131:8–12, 132:13–17; Ex. F, Hejazi Dep. Tr. at 62:21–63:23, 66:2–12.
31. The racial demographics available on the AutoBound software included granular details allowing map-drawers to easily view county and precinct data changes. Ex. F, Hejazi Dep. Tr. at 72:9–73:2, 77:1–5; 164:4–21, 125:16–21.
32. BLR map-drawers did not have access to political or electoral performance data on AutoBound software. Ex. D, Davenport Dep. Tr. at 76:7–15, 77:5–11; Ex. E, Bowen Dep. Tr. at 64:15–23, 95:21–25, 236:13–16.
33. BLR did not generate reports with political data or electoral performance data for any member of the Legislature. Ex. D, Davenport Dep. Tr. at 120:24–121:2.

Contemporaneous Statements by Legislators

34. The Legislature did not adopt required redistricting criteria. Rather, BLR legislative staff provided information about guidelines the Legislature could follow and those guidelines did not reference political goals or use of political data. *See* Mot. Ex. 11, Burch Rep. at 25–28.
35. The Legislature was chiefly concerned with (1) rebalancing the population of each district to be within 1% of the ideal population size, (2) keeping counties and cities whole, and (3) respecting communities of interest. Mot. Ex. 11, Burch Rep. at 25.
36. These redistricting goals had broad, bipartisan support that were ultimately abandoned in favor of a map that split Pulaski County three ways. Mot. Ex. 11, Burch Rep. at 25.
37. The Plan fails to accomplish two of the three key redistricting goals of the Legislature: it splits counties and cities, and it does not respect the Black communities of interest in Pulaski County. Mot. Ex. 11, Burch Rep. at 25.
38. Proposed maps were introduced that kept population deviations below 1% (a stated goal of the Legislature), kept all counties and cities whole, and respected certain communities of interest, including Pulaski County. Mot. Ex. 11, Burch Rep. at 5, 25, 37.
39. When legislators made statements about what they considered important criteria, core retention and compactness were never mentioned. Mot. Ex. 14, Burch Dep. Tr. at 50:13–51:20.
40. Supporters of the map, including some of its drafters, expressly denied the importance of partisanship to the process. Senator Hester (the sponsor of SB721, which also divided Pulaski County three ways), Senator Clark, Senator Rapert, Representative Pilkington, Senator Johnson, Senator Tucker, Representative Hodges, and Representative Collins all disavowed the relevance of partisanship in shaping the maps. Mot. Ex. 11, Burch Rep. at 52–53.

41. During his deposition, Senator Rapert also reaffirmed that partisanship was not a factor. *See* Mot. Ex. 11, Burch Rep. at 53; Mot. Ex. 10, Rapert Dep. Tr. at 24:5–7.

Legislators Were Warned of Adverse Impact

42. Legislators knew they were permitted to consider race to avoid passing a map with racially discriminatory harms. Mot. Ex. 11, Burch Rep. at 38.
43. Yes they expressly refused to consider minority representation under the Voting Rights Act. Mot. Ex. 11, Burch Rep. at 41–42.
44. Proponents of HB1982 and SB743, which became the Plan, were repeatedly warned that the map would have a discriminatory impact on Black Arkansans. Mot. at 45; Mot. Ex. 11, Burch Rep. at 42–45.
45. Legislators were given both qualitative and quantitative data about the harmful impact of the maps on Black political influence in Pulaski County and CD2. *See* Mot. Ex. 11, Burch Rep. at 42–45.
46. Governor Hutchinson warned legislators of the potential dilutive effects of the proposed map on Black political influence. *See* Mot. Ex. 11, Burch Rep. at 45–47.
47. Senator Tucker told Senator English, the author of SB743, that splitting Pulaski County three ways would hurt members of that community more than other constituents, and Senator English replied “I don’t disagree with a lot you said.” Mot. Ex. 11, Burch Rep. at 50.

Legislators Refused to Consider the Adverse Effects of the Plan

48. After learning of the harms of the proposed map, the Legislature rejected non-discriminatory alternatives and instead selected or reaffirmed a map with known discriminatory effects. Mot. Ex. 11, Burch Rep. at 38, 42–45, 47–51.

Sequence of Events

49. In August 2021, the Joint House and Senate Committee on State Agencies and Governmental Affairs agreed on a process where bills were to be submitted and then heard on predefined dates in September 2021. All bills would then be ranked at the end of the process.⁶ The bill that received the most votes at the end of the process would be enacted into law. Mot. Ex. 11, Burch Rep. at 7.
50. On September 29, 2021, the House Committee ranked all of the proposed bills. HB1971, sponsored by Representative Speaks, received the most votes. Mot. Ex. 11, Burch Rep. at 7.

⁶ The Senate never met to rank the bills.

51. On October 4, 2021, without explanation, the Legislature departed from the agreed upon process to introduce HB1982 and SB743. Mot. Ex. 11, Burch Rep. at 8.
52. After HB1982 and SB743 were introduced, the process was “neither transparent nor careful” and was “characterized by confusion on the part of many legislators and attempts by supporters of the bill to limit debate and public comment.” Mot. Ex. 11, Burch Rep. at 8-9, fig. 1.
53. Major events took place in rapid succession, often in a matter of minutes, leaving no time for debate or objections about proposed congressional bills. Mot. Ex. 11, Burch Rep. at 8-9, fig. 1.
54. HB1982 and SB743 were introduced at approximately on October 4, 2021, at 8:40 PM for consideration by the Committee at 10:30 AM the next morning. Mot. Ex. 11, Burch Rep. at 10.
55. When the bills were discussed the next morning, there was significant bipartisan confusion and frustration among legislators about the content of the maps as well as the rushed process. Republican and Democratic legislators objected to the speed and the lack of transparency that characterized this eleventh-hour maneuver. Mot. Ex. 11, Burch Rep. at 10–14.
56. Despite this confusion, HB1982 and SB743 were voted on the same day and were ultimately enacted on October 7, 2021. Mot. Ex. 11, Burch Rep. at 8–9.
57. Proponents of the Plan made clear that the last-minute nature of the introduction of HB1982 and SB743 was intended to stifle debate and public input. Mot. Ex. 11, Burch Rep. at 23–24.

Irregularities in the Legislative Process

58. The introduction of HB1982 and SB743 represented a significant departure from the ordinary legislative process, including the agreed-upon ranking procedure. Mot. Ex. 11, Burch Rep. at 18–19.
59. Legislators from both parties objected to the departure from the ranking process and stated on the record that they should not consider new bills without comparing them to the previously heard and ranked bills. Mot. Ex. 11, Burch Rep. at 18–19.
60. Concerns about the procedural departures were voiced even by supporters of the map. Mot. Ex. 11, Burch Rep. at 19.
61. Procedural irregularities continued after the initial departure from the ranking process. During the 10:30 AM meeting of the Senate on October 5, 2021, legislators suggested that certain errors should be corrected in the map. Mot. Ex. 11, Burch Rep. at 20. But Senator Rapert and Senator Hickey pressured legislators to pass the SB743 as-is, and Senator Hickey threatened to extract the bill if they did not vote on it without further debate. *Id.*

- 62. Senators voted overwhelmingly against passing SB743 out of committee. As threatened, Senator Hickey immediately moved to extract the bill. Both Democratic and Republican senators spoke out against this move. Mot. Ex. 11, Burch Rep. at 20–23.
- 63. Representatives also felt pressure to pass HB1982 quickly. Mot. Ex. 11, Burch Rep. at 20–21.
- 64. The record shows that the departures from the ordinary legislative process were expressly intended to stifle dissent. Mot. Ex. 11, Burch Rep. at 24–25.

Statistical Evidence that Race, Not Party Explains the Plan

- 65. Defendant’s expert, Thomas Bryan, did not provide a statistical analysis disentangling race and party. *See* Bryan Dep. Tr. #1 at 28: 2–17; Ex. M, Liu Rebuttal Rep. at 2–7.
- 66. Plaintiffs’ expert, Dr. Baodong Liu found that: (1) Black Democratic voters were 7% less likely to be assigned to CD2 from the available envelope counties than are white Democratic voters; (2) Black and white Republican voters had similar rates of assignment to CD2 from the envelope counties; and (3) Black voters who either did not vote or voted for third parties were 13% less likely to be assigned to CD2 as compared to their white counterparts. Ex. C, Liu Rep. at 18–19, table 3, fig. 3.
- 67. White voters are disproportionately retained within CD2 as compared with their Black counterparts from the same party. Ex. C, Liu Rep. at 21–22, table 6, fig. 4.
- 68. White voters are also disproportionately moved into CD2 as compared with their Black counterparts of the same party. Ex. C, Liu Rep. at 21–22, table 6, fig. 4.
- 69. Black Democrats were disproportionately moved out of CD2 relative to white Democrats. Ex. C, Liu Rep. at 21–23, table 6, fig. 4.
- 70. White Republicans were moved out of CD2 at higher rates than white Democrats. Ex. C, Liu Rep. at 21–23, table 6, fig. 4.
- 71. White Democrats were less likely to be moved into or out of CD2. Ex. C, Liu Rep. at 25.
- 72. Black Democrats were the least likely to be moved into CD2 and the most likely to be moved out of CD2. Ex. C, Liu Rep. at 25.
- 73. Black Democratic voters in Pulaski County specifically were moved out of CD2 at higher rates than white Democrats in Pulaski County. *See* Ex. C, Liu Rep. at 28–29.
- 74. Using a Pearson Residual Chi-squared statistical significance test, Dr. Liu determined with “more than 99.9% confidence that there is an association between race and [the into/out/core] assignment type even when accounting for the factor of political party.” Ex. C, Liu Rep. at 24, table 7, fig. 5.

75. Voters' partisan preference is not a statistically supportable alternative explanation for the observed differences in how white and Black voters were sorted into and out of CD2. Ex. C, Liu Rep. at 25–26.
76. Although Black Democrats in Pulaski County were outnumbered by both white Democrats and white Republicans, Black Democrats in Pulaski County were in fact the racial/partisan subgroup that was moved out of CD2 in the largest number by the Plan. Ex. C, Liu Rep. at 28–29, fig. 8.
77. Using a Pearson Residual Chi-squared statistical significance test, Dr. Liu and determined with “more than 99.9% confidence that there is an association between race and how voters of Pulaski are retained or moved out of CD2 even when accounting for the factor of political party.” Ex. C, Liu Rep. at 29–30, table 8, fig. 9.
78. Race, rather than partisan preference, better explains the changes made to CD2 specifically within Pulaski County. Ex. C, Liu Rep. at 31.
79. Defendant's expert did not offer any rebuttal to Dr. Liu's findings. *See* Ex. B, Bryan Dep. Tr. at 28:14–17.

Alternative Maps Show Cracking Black Voters was Not Necessary

80. The Legislature could have enacted a plan that performed even better at equalizing the population—with only 0.02% population deviation as compared to the Plan's 0.09% population deviation—and that, on balance, performed equally well or better than the Plan on traditional redistricting principles. Mot. Ex. 3, Cooper Rep. ¶¶ 67-68, figs. 23-25.
81. The Legislature could have enacted a plan with comparable partisan effect and better performance on traditional redistricting principles. Cooper's Alternative Plan 2 improves Republican performance by 0.9–1.3% across all five 2022 electoral contests that Defendant's expert examines. *See* Mot. Ex. 9, Bryan Suppl. Rep. ¶ 33, table VII.A.2.
82. The Legislature could have enacted a plan that achieved even higher levels of partisan effect than the 2011 Plan and the same level of partisan effect as the Plan with comparable or better performance on traditional redistricting principles without cracking Pulaski County. *See* Ex. I, Corrected Cooper Rebuttal Rep. ¶¶ 7–9, 6–9 ¶14, figs. 1–3.
83. Cooper's Alternative Plan 3 increases Republican performance nearly four-fold as compared to the 2011 enacted plan increasing performance by 4.0-4.9% across all five 2022 electoral contests examined by Defendant's expert. *See* Mot. Ex. 9, Bryan Suppl. Rep. ¶ 33, table VII.A.2.
84. Cooper's Alternative Plan 3 also achieves comparable or better performance on traditional redistricting principles without cracking Pulaski County. *See* Ex. I, Corrected Cooper Rebuttal Rep. ¶¶ 17–19, 22, fig. 3.

- 85. An improvement in political performance or partisan advantage is “any amount of improvement in a race that was . . . a higher percent than what it would have been under the 2011 plan.” Ex. B, Bryan Dep. Tr. #1 at 247:1–4. That could be as little as 0.01% increase. *See id.* at 247:6–9.
- 86. Cooper’s Alternative Plans (1, 2, and 3) did not pair incumbents. *See* Mot. Ex. 3, Cooper Rep. at 40, fig. 25, 43, fig. 28; Ex. I, Corrected Cooper Rebuttal Rep. at 8–9, fig. 3.
- 87. No plans introduced for consideration by the Legislature paired incumbents. *See* Ex. O, Davenport Dep. Tr. at Exhibits 5–35; Ex. P, CMA_0001912.

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Respectfully Submitted,

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