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

ALPHA PHI ALPHA FRATERNITY INC., et al., *Plaintiffs*, vs. BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia. *Defendant*.	CASE NO. 1:21-CV-5337-SCJ

PLAINTIFFS' RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

This is a trial case, and it always has been. Trial courts have a "special vantage point" in Section 2 vote dilution cases, which involve claims that are "[n]ormally . . . resolved pursuant to a bench trial." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1343 (11th Cir. 2015) ("*Ga. NAACP*") (vacating grant of summary judgment in Section 2 case). Summary judgment is rarely appropriate because Section 2 claims involve an "intensely local appraisal" of all the relevant facts and the resolution of "complex questions of fact and law." *Id.* at 1349; *see also Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1241 (N.D. Ga. 2022) (explaining that "[t]he *Gingles* requirements 'present mixed questions of law and fact'" (citation omitted)).

On this record, summary judgment is starkly inappropriate.

Over a year ago, this Court held that Plaintiffs were likely to succeed on the merits. *Alpha Phi Alpha*, 587 F. Supp. 3d at 1266. Plaintiffs' case under the established *Gingles* framework has only gotten stronger since then. William Cooper's new Illustrative Plans perform better along almost every metric while also adding new majority-Black districts; Dr. Lisa Handley's analysis of the November 2022 elections shows continued racially polarized voting across Georgia and in the areas of interest; and Plaintiffs' Senate Factors experts have

deepened their analyses showing that Black voters in the areas of interest cannot participate in the political process on equal terms. At trial, Plaintiffs will prove that, in the Atlanta Metro and elsewhere, the challenged districting scheme results in unequal opportunities for Black Georgians. At best, Defendant's motion simply previews trial defenses premised on contested questions of fact.

Defendant's first proposed ground for summary judgment, based on the first *Gingles* precondition ("*Gingles* 1"), rests on sharply disputed, one-sided characterizations of Mr. Cooper's Illustrative Plans. Out of 34 assertions of supposedly material facts in Defendant's Rule 56.1 Statement regarding the Illustrative Plans, fully 27 are disputed. *See* Pl.'s Resp. to Def.'s SUMF ¶¶ 32-65. In fact, far from showing that Mr. Cooper was "improperly focused on race" (Br. 4), the record demonstrates that Mr. Cooper meticulously and successfully balanced traditional districting principles while also drawing maps that include additional Black-majority districts. Mr. Cooper's Illustrative Plans are at least as compact as the enacted maps. Plaintiffs' Statement of Additional Facts ("SOAF") ¶¶ 94-98. They split fewer counties, fewer precincts, fewer metro areas, fewer regional commissions. SOAF ¶¶ 99-110. As Mr. Cooper explained in his report and testified in response to district-by-district questioning, he made line-drawing decisions on numerous grounds other than race, including communities'

geographic proximity, common transportation arteries, socioeconomic commonalities, meeting strict population deviation requirements, keeping districts compact, reducing splits, and protecting incumbents, all while also drawing additional majority-Black districts in areas where Georgia's Black population is especially numerous and concentrated. *See infra* pp. 13-16.

This Court already found Mr. Cooper "highly credible." *Alpha Phi Alpha*, 587 F. Supp. 3d at 1244. When asked whether he prioritized race over other traditional districting considerations in drawing the Illustrative Plans, Mr. Cooper was crystal clear: "[a]bsolutely not." Dep. of William Cooper [Dkt. 221] ("Cooper Dep.") 221:4-7. Defendant may pursue his contrary assertion that Mr. Cooper was "improperly focused on race" at trial. But to suggest that no reasonable trier of fact could disagree, on this record, is unsupportable.

Defendant's second ground for summary judgment, based on the second and third *Gingles* preconditions, fares no better. The record shows that Black voters in the areas of interest vote cohesively ("*Gingles* 2") and that the White majority typically votes as a bloc to defeat Black voters' preferred candidates in those areas ("*Gingles* 3"). Defendant does not disagree; instead, he tries to rewrite the legal standard, suggesting that Plaintiffs must *also* prove that race rather than partisanship caused these voting patterns. There is no basis in text or precedent to

adopt that rule. And even if there were, the next step would be a trial on contested facts, not summary judgment.

The evidence shows that Georgia's polarized voting patterns are best explained by race, not party. Historian Dr. Jason Ward's analysis shows racial attitudes and divisions drove the State's present partisan alignment, especially in response to the parties' positions on civil rights and racial equality. Dr. Adrienne Jones's analysis shows that the salience of race in politics continues into the present day, with racial appeals pervading political campaigns in Georgia. And Dr. Lisa Handley's analysis of Democratic primaries shows that racial polarization persists even accounting for party affiliation.

As with *Gingles* 1, Defendant may pursue his "party not race" arguments at trial. Because a factfinder could easily reject them, the motion should be denied.

FACTUAL BACKGROUND

I. Georgia's Black Population Grows Dramatically

Georgia's Black[1] population has experienced massive growth in recent years. SOAF ¶¶ 25-54. Between 2000 to 2020, the number of Black Georgians increased by over 1.1 million people, a nearly 50% increase. SOAF ¶ 25; Report

[1] As used herein, "Black" (or "any-part Black," or "AP Black") refers to persons who are single-race Black or persons of two or more races and some part Black, including Hispanic Black. SOAF ¶ 25 n.1.

of William Cooper Pt. 1 [Dkt. 237-1] ("Cooper Report Pt. 1") ¶ 50, Fig. 5. 1.1 million people is equal to the population of six entire State Senate districts or more than 19 entire State House districts. SOAF ¶ 28; Cooper Report Pt. 1 ¶ 14 n.6. Over the last decade, Georgia's Black population increased by nearly 500,000, while the White population actually declined. SOAF ¶¶ 29, 31; Cooper Report Pt. 1 ¶ 50, Fig. 5.

Black population growth was especially substantial in the Metro Atlanta area, increasing by over 900,000 people between 2000 and 2020. SOAF ¶¶ 32, 34; Cooper Report Pt. 1 ¶ 51, Fig. 6. In the last decade alone, Black population growth in Metro Atlanta equates to more than two entire State Senate districts or more than six entire State House districts. SOAF ¶ 33; Cooper Report Pt. 1 ¶ 14 n.6. Counties in the South Metro area saw some of the highest rates of change; the five-county Fayette, Spalding, Henry, Newton, and Rockdale area experienced nearly 300% Black population growth over the last two decades even as the White population fell. SOAF ¶¶ 46, 52; Cooper Report Pt. 1 ¶ 55, Fig. 7. Meanwhile, in Southwest Georgia and the Black Belt counties outside Augusta, the Black population increased as a proportion of the overall population, becoming more concentrated. SOAF ¶¶ 41-44; Cooper Report Pt. 1 ¶ 58, Fig. 8 & ¶ 61, Fig. 9.

II. Georgia Enacts Contested Legislative Plans That Fail to Account for the Significant Increase in the State's Black Population

The Georgia General Assembly's post-2020 Census redistricting process failed to provide a meaningful opportunity for Black voters to participate. The House and Senate Redistricting Committees held "town halls" about redistricting *before* the release of the Census data used to redraw districts. SOAF ¶¶ 1-2; Dep. of Bonnie Rich [Dkt. 227] ("Rich Dep.") 175:10-23, 185:10-18. They never met in Gwinnett, Cobb, or DeKalb Counties, three of Atlanta's most populous counties. SOAF ¶ 4; Dep. of Jan Jones [Dkt. 241] ("J. Jones Dep.") 64:10-65:20. Nor did legislators answer voter questions. SOAF ¶ 3; Rich. Dep. 182:2-5.

The actual map-drawing process was a partisan affair that took place behind closed doors. Black lawmakers believed that the Republican officials in charge of the process were not willing to entertain their input. SOAF ¶¶ 6-7; Dep. of Derrick Jackson [Dkt. 228] ("D. Jackson Dep.") 20:9-21:5. Consistent with that, the Chair of the House Redistricting Committee testified that conversations with constituents and advocacy groups did not change her views on the maps because she viewed those Georgians as "very liberal." SOAF ¶ 8; Rich Dep. 163:11-164:2. In the end, the House and Senate maps were passed out of committee along party and racial lines, with all five Black members voting against the maps. SOAF ¶¶ 9-10; J. Jones Dep. 207:5-209:3, 210:9-211:10. Days later, the General Assembly passed

both maps. SOAF ¶ 11; Exs. A-F. Not a single Black legislator voted in favor. SOAF ¶ 13; Exs. C-F. The entire process, from the public release of the maps through final passage, took less than two weeks. SOAF ¶ 11; Exs. A-F.

The resulting maps (the "Enacted Plans") effectively froze the number of Black-majority legislative districts, despite the massive growth of Georgia's Black population. The Enacted Senate Plan has the same number of Black-majority districts as the benchmark 2014 Plan, and only one more than the 2006 Plan. SOAF ¶ 54; Cooper Report Pt. 1 ¶ 70, Fig. 11. The Enacted House Plan has only two more Black-majority districts than the benchmark 2015 Plan, and four more than the 2006 Plan. SOAF ¶ 55; Cooper Report Pt. 1 ¶ 132, Fig. 23.

III. Plaintiffs File This Lawsuit

After the General Assembly approved the Enacted Plans, Governor Kemp waited for approximately 40 days, until December 30, 2021, to sign them into law. SOAF ¶ 12; Exs. A-B. Within hours, Plaintiffs brought this lawsuit under Section 2 of the Voting Rights Act, *see* Dkt. 1, and soon moved for a preliminary injunction, *see* Dkt. 26. After a six-day hearing featuring testimony from 15 witnesses, this Court held, in a 238-page opinion, that Plaintiffs were likely to succeed on the merits with respect to Senate and House districts in the Metro Atlanta area and elsewhere. *Alpha Phi Alpha*, 587 F. Supp. 3d at 1302. Among

other things, the Court concluded that Plaintiffs were likely to establish the three *Gingles* preconditions. *Id.* at 1241, 1266, 1311, 1314. However, the Court denied the request for relief in advance of the 2022 election, concluding that it was "a difficult decision" but that it was too late to change the district lines. *Id.* at 1327.

IV. Plaintiffs' Illustrative Plans Add Majority-Black Districts While Respecting Traditional Districting Principles

To demonstrate *Gingles* 1, Plaintiffs' expert William Cooper drew illustrative legislative maps (the "Illustrative Plans"). His goal was to determine whether creating additional majority-Black districts beyond those in the Enacted Plans "would be possible within the constraints of traditional districting principles." SOAF ¶ 65; Cooper Dep. 33:23-25.

Mr. Cooper's process was holistic and meticulous. He began by identifying two larger areas in the State with substantial Black populations where it might be possible to draw additional districts: Metro Atlanta, and the Black Belt, which runs roughly from Augusta to Southwest Georgia. SOAF ¶ 67; Cooper Report Pt. 1 ¶¶ 18-24, 25-35; Cooper Dep. 76:9-16, 77:2-8, 83:25-84:5. Mr. Cooper identified four regions within those larger areas on which to focus his inquiry further: South Metro Atlanta, the Eastern Black Belt, the Macon Metro, and the Western Black Belt. SOAF ¶ 68; Cooper Dep. 210:21-211:2; Cooper Report Pt. 1 ¶¶ 25-35. Mr. Cooper "did not think of [the regional areas] as being hard

boundaries," Cooper Dep. 210:16-18, but as guideposts to aid the inquiry. SOAF ¶ 74; Cooper Dep. 97:13-15.

In drawing his Illustrative Plans, Mr. Cooper endeavored to balance all of the traditional districting principles, including "population equality, compactness, contiguity, respect for communities of interest, and the non-dilution of minority voting strength." SOAF ¶ 75; Cooper Report Pt. 1 ¶ 10. He considered the Guidelines used by the General Assembly's Redistricting Committees, as well as the benchmark and prior historical plans. SOAF ¶ 76; Cooper Dep. 37:2-6, 49:3-50:13. He considered compactness, testifying that he sought to "put together districts that are reasonably shaped, easy to understand, and . . . compact[]." SOAF ¶ 77; Cooper Dep. 53:17-19. He considered population deviation, testifying that he worked to stay within the "very tight" limitations of the Enacted Plans (1% deviation for Senate districts, and 1.5% for House districts). SOAF ¶¶ 83-84; Cooper Report Pt. 1 ¶¶ 111, 184; Cooper Dep. 61:6-15, 121:20-122:7. And he considered county and precinct lines, testifying that he "made every effort to avoid splitting" counties and precincts. SOAF ¶ 78; Cooper Dep. 210:7-8.

Mr. Cooper also considered municipal boundaries, regional commission and county commission boundaries, and Census-defined metropolitan and core-based statistical areas. SOAF ¶ 86; Cooper Dep. 50:14-51:5; 207:9-208:17. He

considered geographic and economic features like transportation corridors. SOAF ¶ 86; Cooper Dep. 50:14-51:5; 207:9-208:17. He considered historical and socioeconomic connections. SOAF ¶ 86; Cooper Dep. 50:14-51:5; 207:9-208:17. He considered incumbent protection. SOAF ¶ 87; Cooper Dep. 48:24-49:2.

In addition to all these considerations, to ensure that he had some sense of "more or less where the Black population lives," Mr. Cooper "sometimes" turned on a feature of his mapping software that indicated which precincts had an overall Black voting age population ("VAP") of 30 percent or higher. SOAF ¶¶ 88-89; Cooper Dep. 60:15-61:1, 63:16-21. This feature did not display racial demographic information at a more granular level. SOAF ¶ 88; Cooper Dep. 60:15-61:1. When asked about maximizing the number of Black-majority districts, Mr. Cooper testified that was not his practice, as it would conflict with traditional districting principles. SOAF ¶ 92; Cooper Dep. 41:17-42:5. When asked whether he prioritized race over other districting considerations in drawing his Illustrative Plans, he testified, "absolutely not." SOAF ¶ 91; Cooper Dep. 221:4-7.

The result of Mr. Cooper's careful, balanced process is the Illustrative Plans, which add majority-Black Senate and House districts while considering all the traditional districting principles. The Illustrative Plans draw three additional majority-Black State Senate districts (two in South Metro Atlanta and one in the

Eastern Black Belt) and five additional majority-Black State House districts (two in South Metro Atlanta, one in the Eastern Black Belt, one in the Western Black Belt, and one in metropolitan Macon). SOAF ¶ 204; Cooper Report Pt. 1 ¶ 9.

Overall, Mr. Cooper's Illustrative Plans perform the same or better than the Enacted Plans on nearly every quantifiable metric. The overall compactness of each of the Illustrative Plans (as measured by Reock and Polsby-Popper scores) is virtually identical to those of the Enacted Plans. SOAF ¶¶ 93-98; Dep. of John Morgan [Dkt. 236] ("Morgan Dep.") 277:15-23, 278:16-279:3; Cooper Report Pt. 1 ¶ 114, Fig. 20 & ¶ 186 Fig. 36. Each Illustrative Plan has higher minimum compactness scores than the corresponding Enacted Plans (meaning the *least* compact district in each of the Illustrative Plans is more compact than the least compact district in the Enacted Plans). SOAF ¶¶ 97-98; Cooper Report Pt. 1 ¶ 114, Fig. 20 & ¶ 186, Fig. 36. The Illustrative Senate Plan splits fewer counties and fewer precincts than the Enacted Plan, and the Illustrative House Plan splits fewer counties and the same number of precincts. SOAF ¶ 99-101, 106-108; Cooper Report Pt. 1 ¶ 189, Fig. 37 & ¶ 116, Fig. 21. Each of the Illustrative Plans keeps more cities and towns intact than the Enacted Plans, and splits fewer regional commissions. SOAF ¶¶ 102-105, 109-110; Cooper Report Pt. 1 ¶ 116, Fig. 21, ¶ 119, Fig. 22, & ¶ 189, Fig. 37.

The individual new Black-majority districts in the areas of interest in the Illustrative Plans also compare favorably to those in the Enacted Plans. For example, Enacted Senate District ("SD") 17 reaches out from diverse, booming Atlanta suburbs in Henry County to rural Morgan and Walton Counties, in a shape that the State's own mapper Gina Wright conceded was "jagged." SOAF ¶ 114; Dep. of Gina Wright [Dkt. 225] ("Wright Dep.") 195:8-12. In contrast, Illustrative SD 17, which is majority-Black, groups nearby suburban areas that share socioeconomic commonalities in a smaller, more compact district. SOAF ¶¶ 116, 118-119; Cooper Report Pt. 1 ¶ 105, Fig. 17D; Cooper Dep. 139:14-19.

Similarly, Enacted SD 16 stretches for 50 miles to unite very different communities, connecting communities in suburban Atlanta such as Fayetteville with rural areas that are socioeconomically distinct. SOAF ¶¶ 127-129; Report of John Morgan [Dkt. 236-2] ("Morgan Report") ¶¶ 24, 29; Cooper Report Pt. 1 ¶ 96, Fig. 16 & ¶ 126. By contrast, Illustrative SD 28, which is a new Black-majority district, is half the length (24 miles) and connects South Metro suburban and exurban communities that are geographically close and share socioeconomic characteristics. SOAF ¶¶ 127, 130-132; Morgan Report ¶¶ 24, 29; Cooper Report Pt. 1 ¶ 125; Cooper Dep. 126:25-127:9, 127:10-19, 130:14-23, 131:3-10.

Moreover (and in sharp contrast with Defendant's assertion that Mr. Cooper

"could identify practically nothing beyond the race of the voters" that supported his line-drawing decisions, Br. 18), Mr. Cooper identified numerous reasons other than race for his various mapping decisions in configuring each and every one of the new majority-Black districts in the areas of focus:

- For majority-Black Illustrative SD 17, Mr. Cooper specifically identified: grouping suburban areas together, SOAF ¶ 118; Cooper Dep. 139:14-19, uniting counties with shared socioeconomic characteristics, such as similar levels of educational attainment, SOAF ¶ 119; Cooper Report Pt. 1 ¶ 127, and drawing a less "sprawling" and more compact district, SOAF ¶ 116; Cooper Report Pt. 1 ¶ 105, Fig. 17D.
- For majority-Black Illustrative SD 23, Mr. Cooper specifically identified: grouping counties in the historical Black Belt together, SOAF ¶ 122; Cooper Dep. 144:20-24; Cooper Report Pt. 1 ¶ 18, Fig. 1, uniting counties with shared socioeconomic characteristics, such as poverty levels, SOAF ¶ 123; Cooper Report Pt. 1 ¶ 129, staying within population deviation limits, SOAF ¶ 124; Cooper Dep. 143:8-17, 185:8-14, maintaining compactness, SOAF ¶ 125; Cooper Dep. 143:8-17, and following municipal and precinct lines in Wilkes County, SOAF ¶ 126; Cooper Report Pt. 1 ¶ 109 & Fig. 19B; Cooper Dep. 143:18-23, 144:4-8.

- For majority-Black Illustrative SD 28, Mr. Cooper specifically identified: uniting counties with shared socioeconomic characteristics, such as labor force participation, SOAF ¶ 130; Cooper Report Pt. 1 ¶ 125, connecting geographically proximate communities, SOAF ¶ 131; Cooper Dep. 126:25-127:9, 127:10-19, connecting suburban and exurban Metro communities, SOAF ¶ 132; Cooper Dep. 130:14-23, 131:3-10, keeping precincts whole, SOAF ¶ 133; Cooper Dep. 127:10-19, and avoiding a split of Griffin, the largest city and county seat of Spalding County, SOAF ¶ 134; Cooper Dep. 132:6-133:14.
- For majority-Black Illustrative House District ("HD") 74, Mr. Cooper specifically identified: uniting counties with shared socioeconomic characteristics, such as labor force participation, SOAF ¶ 136; Cooper Report Pt. 1 ¶ 198, and connecting suburban communities, SOAF ¶ 137; Cooper Dep. 178:14-179:12.
- For majority-Black Illustrative HD 117, Mr. Cooper specifically identified: uniting counties with shared socioeconomic characteristics, such as labor force participation, SOAF ¶ 138; Cooper Report Pt. 1 ¶ 198, connecting geographically proximate communities, SOAF ¶ 139; Cooper Dep. 175:23-176:7, 217:9-24, adhering to population deviation

requirements, SOAF ¶ 140; Cooper Dep. 175:15-19, connecting exurban communities, SOAF ¶ 141; Cooper Dep. 176:2-7, 217:9-20, and following transportation corridors and precinct lines, SOAF ¶ 142; Cooper Dep. 176:17-22.

- For majority-Black Illustrative HD 133, Mr. Cooper specifically identified: connecting counties in the historical Black Belt, SOAF ¶ 143; Cooper Report Pt. 1 ¶¶ 174, 199, connecting counties with shared socioeconomic characteristics, such as similar levels of education, SOAF ¶ 144; Cooper Report Pt. 1 ¶ 199, protecting incumbents, SOAF ¶ 145; Cooper Dep. 183:8-12, 187:10-19, 188:12-18, following municipal boundaries, SOAF ¶ 146; Cooper Dep. 186:1-16, and following local county commission lines, SOAF ¶ 147; Cooper Dep. 186:1-16.
- For majority-Black Illustrative HD 145, Mr. Cooper specifically identified: connecting geographically proximate communities, SOAF ¶ 148; Cooper Report Pt. 1 ¶ 201, connecting counties with shared socioeconomic characteristics, such as poverty levels, SOAF ¶ 148; Cooper Report Pt. 1 ¶ 201, connecting communities within the Macon metropolitan statistical area, SOAF ¶ 149; Cooper Dep. 197:22-198:6, adhering to population deviation requirements, SOAF ¶ 150; Cooper

Dep. 197:22-198:6, and following regional commission boundaries, SOAF ¶ 151; Cooper Dep. 198:24-199:4.

- For majority-Black Illustrative HD 171, Mr. Cooper specifically identified: reducing splits of Dougherty County, SOAF ¶ 152; Cooper Dep. 193:18-25, connecting communities along historic U.S. Highway 19, a historic transportation and cultural corridor, SOAF ¶ 153; Cooper Dep. 189:2-7, 191:22-192:5, 193:7-12; Cooper Report Pt. 1 ¶ 178, connecting counties in the historical Black Belt, SOAF ¶ 154; Cooper Dep. 217:25-218:8, connecting counties with shared socioeconomic characteristics, such as similar levels of poverty, SOAF ¶ 155; Cooper Dep. 218:21-219:6; Cooper Report Pt. 1 ¶ 200, and consistency with prior district shapes, SOAF ¶ 156; Cooper Dep. 190:1-14.

V. Racially Polarized Voting Usually Results in the Defeat of Black-Preferred Candidates in the Areas of Interest

With respect to *Gingles* 2, in each of the areas of interest, *i.e.*, areas where the Illustrative Plans add majority-Black districts, Dr. Lisa Handley found that Black and White voters vote cohesively for different candidates. SOAF ¶¶ 166-168; Report of Lisa Handley [Dkt. 222, Ex. 3] ("Handley Report") 9. In the 16 statewide general elections she analyzed, 96.1% of Black voters on average voted for the Black-preferred candidate, compared to just 11.2% of White voters. SOAF

¶¶ 166-167; Handley Report 9. The results were similar in the 54 state legislative contests she analyzed. SOAF ¶ 168; Handley Report 9.

On *Gingles* 3, Dr. Handley's analysis also showed that Black-preferred candidates almost always lose due to White bloc voting outside of Black-majority districts. In those 54 state legislative races, "[a]ll but one of the successful Black state legislative candidates" preferred by Black voters were elected from majority-Black districts. SOAF ¶ 175; Handley Report 9-10.[2] Black voters, Dr. Handley explained, "are very unlikely to be able to elect their preferred candidates to the Georgia state legislature" in the areas of interest because "White voters in these areas consistently bloc vote to defeat the candidates supported by Black voters." SOAF ¶¶ 176-177; Handley Report 9-10, 31.

Moreover, historical, sociopolitical, and statistical evidence illustrates that race plays a key role in the observed pattern of polarized voting. With respect to history, Dr. Ward found that race has "play[ed] a crucial role" in determining Georgia voters' partisan alignment. SOAF ¶ 187; Report of Jason Ward [Dkt. 242-6] ("Ward Report") 1, 13, 17-18, 22. Dr. Jones testified that one could "probably" "rule out partisanship" as the source of polarized voting patterns because racial

[2] The one exception came from a district where neither Black nor White voters made up a majority of the VAP. SOAF ¶ 175; Handley Report 9-10 & n.16.

polarization has "persisted" despite shifts in the partisan balance over time. SOAF ¶ 193; Dep. of Dr. Adrienne Jones [Dkt. 239] ("A. Jones Dep.") 170:5-172:13.

With respect to contemporary politics, both Drs. Ward and Jones found that racial appeals in Georgia elections persist today and "continue to play a central role in political campaigns." SOAF ¶¶ 194, 200; Ward Report 23; Report of Dr. Adrienne Jones [Dkt. 239-8] ("Jones Report Pt. 2") at 37-44; A. Jones Dep. 172:8-13. For example, a robo-call referred to Stacey Abrams as a "Negress" and "a poor man's Aunt Jemima" during her gubernatorial campaign. SOAF ¶ 201; Jones Report Pt. 2 38. Senator Raphael Warnock faced ad campaigns that darkened his skin color. SOAF ¶ 202; Jones Report Pt. 2 38-40. In 2020, a Republican congressional candidate in Georgia, who later prevailed, referred to Black people as the Democratic Party's "slaves." SOAF ¶ 203; Jones Report Pt. 2 42-43. The fact that these appeals focus on candidates' race, and not simply on partisan affiliation, shows that race "continue[s] to play an important role in political campaigns in Georgia" and drives the polarization observed in these contests. *See* SOAF ¶ 200; Jones Report Pt. 2 37-44; A. Jones Dep. 172:8-13.

And with respect to quantitative analysis, Dr. Handley analyzed 11 recent Democratic primary elections in the seven areas of interest and found the majority of those 77 contests to be racially polarized. SOAF ¶ 183; Handley Report 9-10.

These results necessarily cannot be explained by party affiliation. SOAF ¶ 179; Dep. of Lisa Handley [Dkt. 222] ("Handley Dep.") 33:21-25, 34:1-14; PI Hr'g Tr. (Feb. 10, 2022, AM) [Dkt. 109] 100:13-16; *cf.* SOAF ¶ 186; Dep. of John Alford [Dkt. 229] ("Alford Dep.") 186:4-7 (agreeing primaries control for party when addressing voting behavior).

ARGUMENT

Summary judgment may be granted only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "[T]he court must construe the facts and draw all rational inferences therefrom in the manner most favorable to the nonmoving party." *Ga. NAACP*, 775 F.3d at 1343. Unlike at trial, the court "may not weigh the evidence or find facts" or "make credibility determinations." *Ga. NAACP*, 775 F.3d at 1343 (quoting *Morrison v. Amway Corp.*, 323 F.3d 920, 924 (11th Cir. 2003)). If "there is sufficient evidence upon which a [fact-finder] could find" for Plaintiffs, then Defendant's motion fails. *Ga. NAACP*, 775 F.3d at 1343 (quoting *Morrison*, 323 F.3d at 924) (cleaned up).

I. Defendant Is Not Entitled to Summary Judgment on *Gingles* 1

Plaintiffs agree with this Court that an illustrative plan may not "subordinate traditional redistricting principles to racial considerations substantially more than is

reasonably necessary to avoid liability under Section 2." *Alpha Phi Alpha*, 587 F. Supp. 3d at 1264 (quoted in Br. 16). Mr. Cooper's plans do no such thing.

Defendant's assertion that "the evidence demonstrates" improper racial gerrymandering (Br. 16-18) is a one-sided construction of the facts that the record does not support and a factfinder would readily reject. Summary judgment on such a complex and factual question is plainly improper. *Ga. NAACP*, 775 F.3d at 1343. Especially so here, because each of Defendant's factual premises is faulty.

First, Defendant claims that Mr. Cooper "used racial shading and other techniques in his efforts to create majority-Black districts" (Br. 16), but the one software feature in the record that he could be referencing—which Mr. Cooper used to occasionally show dots on precincts with over 30% Black VAP, SOAF ¶ 88; Cooper Dep. 60:15-16—is by no means impermissible. *Miller v. Johnson*, 515 U.S. 900 (1995), on which Defendant relies, is off point in at least two ways. For one, the "shading" at issue there displayed much more extensive data, namely the particular concentration of Black population across the State map. *Id.* at 925. Here, in contrast, the feature Mr. Cooper used indicates only which precincts have a Black VAP of 30% or greater. More importantly, though, the use of "shading" was not the issue in *Miller*. Rather, the problem was the adoption of a "policy of maximizing majority-black districts." *Id.* at 924-25. Here, Mr. Cooper testified he

did *not* engage in maximization, and a fact-finder could credit his testimony (especially given that the Illustrative Plans have *fewer* Black majority districts than the preliminary injunction stage plans). SOAF ¶ 92; Cooper Dep. 41:17-42:5.

Defendant also claims that Mr. Cooper could not "identify factors that connected areas of his new majority-Black districts" (Br. 16-17) and that he "could identify practically nothing beyond the race of the voters in a number of his districts that united them" (Br. 18), but Mr. Cooper's report and deposition provide a litany of examples to the contrary. *See supra* pp. 13-16 (listing pages of examples for each new Black-majority district in the Illustrative Plans and citing SOAF ¶¶ 113-157 and underlying record).[3] To take just one, for majority-Black Illustrative SD 28, Mr. Cooper identified at least five different principles other than race that featured in his configuration of the district, including uniting counties with shared socioeconomic characteristics, connecting geographically proximate communities, connecting suburban and exurban Atlanta Metro area communities, keeping precincts whole, and avoiding a split of the City of Griffin. *See* SOAF ¶¶ 130-134; Cooper Dep. 126:25-127:9, 127:10-19, 130:14-23, 131:3-10, 132:6-

[3] Defendant also asserts (Br. 17) that Cooper drew districts based on "the common community of interest shared by all Black individuals," but ignores Cooper's testimony that, notwithstanding the connections of history and experience shared by African-Americans in Georgia, there might also be communities-of-interest reasons *not* to group Black Georgians together. Cooper Dep. 209:2-6.

133:14; Cooper Report Pt. 1 ¶¶ 100, 125 & Fig. 17B. A fact-finder could easily reject Defendant's unsubstantiated characterization of Mr. Cooper's process.

Defendant also claims that "when [Mr. Cooper] split counties, he did so in ways that ensured higher concentrations of Black voters were included in the portions of counties in the new majority-Black districts" (Br. 17), but he cites nothing from the record to support that characterization. In fact, the record says otherwise. For example, as to the split of Baldwin County around Milledgeville in the Illustrative House Plan, Mr. Cooper testified that he configured those lines "to figure out a way to try to draw a plan that was somewhat more reasonably shaped than the municipal boundaries of Milledgeville" and because "there's an incumbent who lives somewhere in all this as well." Cooper Dep. 181:25-182:23, 183:11-12; *see also, e.g.*, Cooper Report Pt. 1 ¶ 171. When asked whether had ever "reviewed the racial composition of the split of Milledgeville," Mr. Cooper testified he had not. Cooper Dep. 183:4-7. Or for another example, in dividing Spalding County, Mr. Cooper used the City of Griffin's municipal boundaries—a quintessential community of interest—as the district boundary. SOAF ¶ 134; Cooper Report Pt. 1 ¶ 100 & Fig. 17B; Cooper Dep. 132:6-133:14. Again, a fact-finder could easily reject Defendant's broad-brush characterization.

Defendant next argues that Plaintiffs present "no evidence of the geographic

compactness of the Black community in the proposed new districts aside from the fact that they are drawn" (Br. 17-18), wholly ignoring Mr. Cooper's demographic analysis identifying regions and counties where Black Georgians are especially numerous and concentrated, SOAF ¶¶ 67-74; *e.g.*, Cooper Report Pt. 1 ¶¶ 18-24, 25-35, 38, 54, 119; Cooper Dep. 76:9-16, 77:2-8, 83:25-84:7, 97:13-15, 210:16-18, 210:21-211:2. Consistent with that, Mr. Cooper explicitly referenced the geographic compactness and proximity of the Black populations he connected as a factor in his decisions. *See, e.g.*, SOAF ¶¶ 139, 146; Cooper Dep. 175:23-176:7, 186:1-16, 217:9-24. Defendant never even engages with this evidence.

Defendant also states that Mr. Cooper's districts "combine distinct minority communities, often with intervening white population" (Br. 18) but (again) never explains what if any specific districts or "distinct communities" this characterization is meant to address. In any case, Mr. Cooper rejected this characterization. When asked whether there was "intervening white population" between the communities of Griffin and Locust Grove, Mr. Cooper replied that he was "just . . . not that concerned" about "the race of people at one point or another within a district." Cooper Dep. 176:23-177:8, 178:9-13. Mr. Cooper also rejected the idea that Griffin and Locust Grove were impermissibly divergent communities, pointing out that they are both exurban communities that are "a stone's throw"

from one another. SOAF ¶ 139; Cooper Dep. 175:23-176:7, 217:9-24. A fact-finder could credit this testimony that Mr. Cooper properly combined similar, proximate communities over Defendant's unsupported contrary assertions.

Last, Defendant unconvincingly suggests that the Illustrative Plans are similar to the 300-mile-long congressional district at issue in *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 433 (2006) ("*LULAC*"). Br. 18. The Supreme Court rejected that district as insufficiently compact, based on "the enormous geographical distance separating the Austin and Mexican-border communities, coupled with the disparate needs and interests of these populations." *LULAC*, 548 U.S. at 435. None of the districts in Mr. Cooper's map remotely resembles the one in *LULAC*, and Defendant never even tries to show otherwise.

The bottom line is that Mr. Cooper balanced all of the traditional districting principles and drew a map that contains more compact districts, keeps more communities whole, and adds Black-majority districts in areas with substantial increasingly concentrated Black populations. *See supra* pp.13-16; SOAF ¶¶ 65, 91; Cooper Dep. 33:18-34:1, 221:4-7; Cooper Report Pt. 1 ¶¶ 9-10, 13; *cf. LULAC*, 548 U.S. at 433 ("While no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." (internal

quotations omitted)). Defendant's own expert conceded that he was offering no opinion about whether the Illustrative Plans comply with traditional districting principles or whether Mr. Cooper's consideration of race was merely consistent with Voting Rights Act compliance. SOAF ¶¶ 158, 162, 163; Morgan Dep. 70:3-8, 247:18-248:8, 254:8-12, 305:16-20. On this record, a rational trier of fact could easily credit Mr. Cooper's testimony and conclude that his careful work did not gratuitously subordinate traditional districting principles to racial considerations.

II. Defendant Is Not Entitled to Summary Judgment on *Gingles* 2 and 3

Defendant's second proposed ground for summary judgment also fails. This Court has already held that "Plaintiffs need not prove the causes of racial polarization, just its existence," to satisfy *Gingles* 2 and 3. *Alpha Phi Alpha*, 587 F. Supp. 3d at 1303, 1312. Under that standard, Plaintiffs have conclusively established *Gingles* 2 and 3. And even if Plaintiffs had to affirmatively disprove race-neutral causes of polarized voting (and they do not), the next step would be a trial on contested facts, not summary judgment.

A. The Record Demonstrates Racially Polarized Voting

Under the *Gingles* framework, racially polarized voting consists of two conditions: "whether minority group members constitute a politically cohesive unit" (*Gingles* 2) and "whether whites vote sufficiently as a bloc usually to defeat

the minority's preferred candidates" (*Gingles* 3). *Thornburg v. Gingles*, 478 U.S. 30, 56 (1986). Plaintiffs have satisfied those conditions.

As to cohesion, Dr. Handley found that Black and White voters vote cohesively in all seven areas of Georgia that are the focus of this litigation, with over 90% of Black voters cohesively supporting their preferred candidates, versus approximately just over 10% of White voters. SOAF ¶¶ 166-168; Handley Report 9. Defendant's own expert, Dr. Alford, conceded that a "very high level of cohesion" exists among both Black and White voters and that Black and White voters are cohesively "supporting different candidates." SOAF ¶¶ 170, 173; *e.g.*, Alford Dep. 88:8-89:19, 112:10-113:13; *see also, e.g.*, SOAF ¶ 171; Alford Dep. 90:3-12 ("extremely cohesive Black support"). Such evidence of political cohesion easily satisfies *Gingles* 2. *See, e.g.*, *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1306 (11th Cir. 2020) ("*Wright II*"); *Ga. State Conf. of NAACP v. Georgia*, 312 F. Supp. 3d 1357, 1360 (N.D. Ga. 2018).

As to *Gingles* 3, Dr. Handley found that, because of racial bloc voting, Black voters are unable to elect their candidates of choice, absent a majority or near-majority Black population in the district. SOAF ¶¶ 176-177; Handley Report 9-10, 31. Those conclusions align with numerous federal court decisions holding that White bloc voting usually causes Black-preferred candidates to lose elections in

Georgia. *See, e.g.*, *Wright II*, 979 F.3d at 1304; *Ga. NAACP*, 775 F.3d at 1340; *Hall v. Holder*, 117 F.3d 1222, 1229 (11th Cir. 1997). And here too, Dr. Alford conceded that it "may well be the case" that Black voters are generally unable to elect their preferred candidates in the challenged districts due to bloc voting by White voters. *See* SOAF ¶ 178; Alford Dep. 91:9-18.

B. Defendant's Alternative View of the Law Is Incorrect

With the evidence conclusively against him under the existing legal standard, Defendant asks the Court to adopt a new one. Defendant argues that Plaintiffs not only must prove the existence of polarization resulting in the defeat of Black-preferred candidates, but also must *disprove* that polarized voting patterns are "on account of politics" rather than race. (Br. 5, 18-20). That is not the law.

Section 2's text is to the contrary. In arguing that Plaintiffs must rule out other potential causes of racial polarization, Defendant rewrites the phrase "on account of race" in Section 2 as "*exclusively* on account of race." *See* 52 U.S.C. § 10301. But the statute contains no such limitation. *See Friends of Everglades v. S. Fla. Water Mgmt. Dist.*, 570 F.3d 1210, 1224 (11th Cir. 2009) ("[W]e are not allowed to add or subtract words from a statute; we cannot rewrite it."). As a matter of text, Section 2 Plaintiffs "are not required to prove the negative" to show racial polarization. *Nipper v. Smith*, 39 F.3d 1494, 1525 (11th Cir. 1994) (en banc)

(plurality op.); *see also* S. Rep. No. 97-417, at 27 n.109 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177 ("on account of race" means "with respect to race").

Nor does precedent support the argument. Eleventh Circuit precedent—which Defendant ignores—is clear that a plaintiff is under no obligation to disprove partisanship in order to satisfy *Gingles* 2 and 3. *E.g.*, *Nipper*, 39 F.3d at 1525 (en banc) (plurality op.).[4] Proof that "a bloc voting majority [will] *usually* be able to defeat candidates supported by a politically cohesive, geographically insular minority group" will "ordinarily create a sufficient inference that racial bias is at work." *Id.* at 1525-26 (citing *Gingles*, 478 U.S. at 49). *Defendant* may then "rebut proof of vote dilution by showing that losses by minority-preferred candidates are attributable to non-racial causes." *Nipper*, 39 F.3d at 1524, 1526; *see also Johnson v. Hamrick*, 196 F.3d 1216, 1220 (11th Cir. 1999). Such rebuttal evidence goes to the totality of the circumstances. *Nipper*, 39 F.3d at 1524 & n.60; *see also Alpha Phi Alpha*, 587 F. Supp. 3d at 1303.

Defendant's reliance on Supreme Court precedent (Br. 19-21) is similarly unavailing. Contrary to Defendant's suggestion, this Court correctly articulated

[4] A majority of the *Nipper* en banc court did not disagree with Judge Tjoflat's burden-shifting framework. *See* 39 F.3d at 1547 (Edmonson, J., concurring) ("I do not say that the rest of the Chief Judge's opinion is wrong."). And a panel later applied it. *See Johnson v. Hamrick*, 196 F.3d 1216, 1220 (11th Cir. 1999).

the standard set forth in *Gingles*. As to *Gingles* 2, the *Gingles* majority (and this Court) explained that "showing that a significant number of minority group members usually vote for the same candidates" sufficiently demonstrates "the political cohesiveness necessary to a vote dilution claim." 478 U.S. at 56*; see also id.* at 53 n.21 (defining "racial bloc" or "racially polarized" voting as a situation "where 'black voters and white voters vote differently'" (cleaned up))*; Alpha Phi Alpha*, 587 F. Supp. 3d at 1302. And as to *Gingles* 3, the majority (and this Court) explained it was sufficient for a plaintiff to show "a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes." 478 U.S. at 56;[5] *Alpha Phi Alpha*, 587 F. Supp. 3d at 1312. None of the *Gingles* opinions purports to require plaintiffs to affirmatively *disprove* the role of

[5] The *Gingles* plurality is even clearer on this point. It explained that racially polarized voting "means simply that the race of voters correlates with the selection of a certain candidate or candidates." *Gingles*, 478 U.S. at 62 (plurality op.). That comports with Congress's aims in the 1982 amendments, including "omit[ting]" language that "had [been] interpreted to require proof of discriminatory intent" and focusing instead on the "results" of a challenged voting scheme. *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2337 (2021).

politics in order to prevail on a vote dilution claim.[6]

The Court's subsequent decision in *LULAC* confirms the applicable standard. There (as here), racial polarization in the relevant area was "severe." 548 U.S. at 427. And there (as here), bloc voting by "the Anglo citizen voting-age majority will often, if not always, prevent Latinos from electing the candidate of their choice." *Id.* On those facts, the Court held that plaintiffs had "demonstrated sufficient minority cohesion and majority bloc voting to meet the second and third *Gingles* requirements." *Id.*; *see also Growe v. Emison*, 507 U.S. 25, 40 (1993) (*Gingles* 2 and 3 are aimed at "establish[ing] that the challenged districting thwarts a distinctive minority vote by submerging it in a larger white voting population") (citing *Gingles*, 478 U.S. at 50). Even though in *LULAC* (as here) it was also true that race strongly correlated with partisanship, 548 U.S. at 423-24, the Court did not require plaintiffs to disprove "politics" as a cause of the polarization.

Defendant's out-of-circuit cases (Br. 25-26) likewise fail to turn the tide. In *League of United Latin American Citizens, Council No. 4434 v. Clements*, 999

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[6] Defendant wrongly characterizes (Br. 20) the concurring opinions of Justice O'Connor and Justice White in *Gingles*, which do not suggest any requirement for Section 2 plaintiffs to disprove non-racial causes of voting patterns. Rather, those concurrences only express disagreement with Justice Brennan's conclusion that causation evidence is *always* irrelevant, deeming such a categorical conclusion "not necessary to the disposition of this case." *Gingles*, 478 U.S. at 101 (O'Connor, J., concurring); *see also id.* at 83 (White, J., concurring).

F.2d 831 (5th Cir. 1993) (en banc), the Fifth Circuit held only that the district court erred when it categorically "excluded evidence" of nonracial causes of voting preferences. 999 F.2d at 850-51. The court expressly declined to impose a rule requiring Section 2 plaintiffs to affirmatively disprove nonracial explanations for voter polarization. *Id.* at 860. It explained that the extent to which "'partisan politics' *is* 'racial politics'" is a fact-specific question to be resolved at trial, and that "courts should not summarily dismiss vote dilution claims" unless "the record *indisputably proves* that partisan affiliation, not race, best explains the divergent voting patterns." *Id.* at 850, 860-61 (emphasis added). Here, the record does no such thing. Moreover, the Fifth Circuit later applied the *Nipper* plurality's burden-shifting framework, under which the burden is on *defendants* to "show[] that no [racial] bias exists in the relevant voting community." *Teague v. Attala Cnty.*, 92 F.3d 283, 290 (5th Cir. 1996) (citing *Nipper*, 39 F.3d at 1524).

Defendant fares no better with *Uno v. City of Holyoke*, 72 F.3d 973, 981 (1st Cir. 1995). There, the First Circuit held that a defendant *may* offer causation evidence for a court to consider in its totality-of-circumstances analysis. *See id.* at 980. But *Uno* expressly rejected Defendant's proposed approach: "[E]stablishing vote dilution does not require the plaintiffs affirmatively to disprove every other possible explanation for racially polarized voting." *Id.* at 983.

Defendant's remaining arguments are likewise without merit. For one, Defendant claims that, unless established law is jettisoned in favor of his new legal standard, Section 2 might somehow come to guarantee proportional representation. Br. 25. That speculation ignores the other elements that vote dilution plaintiffs must satisfy: *Gingles* 1 limits claims to areas where the minority population is of a certain size and compactness, while the totality of circumstances analysis ensures that Section 2 plaintiffs prevail only when racial inequality in the political process is shown. *See* 52 U.S.C. §10301(b); *Solomon v. Liberty Cnty.*, 957 F. Supp. 1522, 1553 (N.D. Fla. 1997) (lack of racial bias requirement "does not lead to proportional representation").

Defendant also wrongly suggests that Section 2's results-based test is unconstitutional because it provides "preferential treatment to particular racial groups." Br. 27-29. But Congress has the power "both to remedy and to deter violations of rights," including by prohibiting conduct that is "not itself forbidden by the [Fifteenth] Amendment[s]'s text." *Nev. Dep't of Hum. Res. v. Hibbs*, 538 U.S. 721, 727 (2003) (citations omitted). Congress determined that the results-based test was necessary in light of "extensive . . . Fifteenth Amendment violations that called out for legislative redress" and that would go unremedied and undeterred if proof of discriminatory intent were required. *Brnovich v. Democratic*

Nat'l Comm., 141 S. Ct. 2321, 2333 (2021); *see also* S. Rep. No. 97-417, at 26-27; *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966). And Congress incorporated circumstantial considerations (now called the "Senate Factors") that are "relevant to the issue of intentional discrimination" as part of the overall, totality-of-the-circumstances analysis. *See Rogers v. Lodge*, 458 U.S. 613, 619-20 n.8, 624 (1982); S. Rep. No. 97-417, at 23-24. Section 2 thus depends in part on a showing of racial inequality; contrary to Defendant's suggestion (Br. 22-23), plaintiffs do not and cannot prevail simply by dint of the Democratic Party losing elections. Far from improving on the well-worn *Gingles* framework, Defendant's proposed new standard "would undermine the congressional intent behind the 1982 amendments to the VRA," *Alpha Phi Alpha*, 587 F. Supp. 3d at 1303.

C. A Rational Trier of Fact Could Conclude that Racially Polarized Voting in Georgia Is Caused by Race

Regardless of the stage at which this Court considers causation and the role of partisanship, summary judgment would be inappropriate here, where Plaintiffs have put forth evidence that race best explains polarized voting in Georgia.

First, the historical evidence demonstrates that the partisan divide is driven by racial division and biases. According to Dr. Ward, for over 150 years "race has been the most consistent predictor of partisan preference in Georgia." SOAF ¶ 191; Ward Report 1, 22; *see also* SOAF ¶ 192; Dep. of Jason Ward [Dkt. 242]

("Ward Dep.") 77:20-78:6. Attitudes towards Black voters and civil rights caused politics in Georgia to shift during the second half of the twentieth century "from an all-white Democratic Party to an overwhelmingly white Republican party over the course of a few decades," continuing "to the present." SOAF ¶¶ 189-190; Ward Report 17-18. The persistence of polarization in Georgia, despite shifts in the partisan landscape, demonstrates how race, not party, drives voting behavior. SOAF ¶ 193; A. Jones Dep. 170:5-172:13. Georgia voters have no inherent attachment to party labels—but have switched sides when the parties' attitudes towards race and minorities change.[7] *See Robinson v. Ardoin*, 605 F. Supp. 3d 759, 845 (M.D. La.), *cert. granted before judgement*, 142 S. Ct. 2892 (2022).

Second, "racial appeals continue to play a central role in political campaigns in Georgia," entrenching the parties' racialized split. SOAF ¶¶ 195-200 (cleaned up); Jones Report Pt. 2 37-44 (cleaned up); A. Jones Dep. 172:8-13; Ward Report 1, 23. That includes both overt and subtle racial appeals such as "conflat[ing] Black voting with urban politics, the welfare state, federal intervention, and electoral corruption." SOAF ¶ 195; Ward Report 1. Such "coded racial appeals

[7] Courts have credited similar evidence in other cases. *See, e.g.*, *League of Women Voters of Fla., Inc. v. Lee*, 595 F. Supp. 3d 1042, 1078, 1081 (N.D. Fla. 2022); *Rodriguez v. Harris County*, 964 F. Supp. 2d 686, 775, 777 (S.D. Tex. 2013), *aff'd sub nom. Gonzalez v. Harris Cnty.*, 601 F. App'x 255 (5th Cir. 2015).

have continued to this day." *Alpha Phi Alpha*, 587 F. Supp. 3d at 1318; *see also Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 776 (S.D. Tex. 2013) *aff'd sub nom. Gonzalez v. Harris Cnty.*, 601 F. App'x 255 (5th Cir. 2015) (crediting similar testimony). And third, statistical analysis shows that racial polarization persists in Democratic primaries, *e.g.*, SOAF ¶ 183; Handley Report 9-10, which necessarily "undermines Defendants' contention that the polarization is the result of partisan factors." *Alpha Phi Alpha*, 587 F. Supp. 3d at 1311. Dr. Alford even conceded that these primary results cannot be explained by party affiliation. SOAF ¶ 180; Alford Dep. 186:4-7.

On this record, a factfinder could conclude that partisan affiliation in Georgia is driven by race, and that race better explains voting patterns in the State. Even under Defendant's proposed standard, the relationship between partisanship and racial polarization is at best the subject of factual dispute to be resolved at trial.

CONCLUSION

Defendant's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/ Rahul Garabadu

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing ***Plaintiffs' Response in Opposition to Defendant's Motion for Summary Judgment*** with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel or parties of record on the service list:

This 19th day of April, 2023.

/s/ Rahul Garabadu